LITTLETONS
Tenures
IN
ENGLISH,
Lately perused and amended.

LONDON,
Printed for the Company of
Stationers, 1661.

The Right Honble Thomas Lord
Viscount Weymouth Baron Thynne
of Warminster 1704

26 In journeying often, in perils of waters, in perils of robbers, in perils by mine own countrymen, in perils by the heathen, in perils in the city, in perils in the wilderness, in perils in the sea, in perils among false brethren.

27 In watchings often, in fastings often, in hunger and thirst, in fastings often, in cold and nakedness.

28 Besides those things that are without, that which cometh upon me daily, the care of all the churches.

29 Who is weak, and I am not weak? who is offended, and I burn not?

30 If I must needs glory, I will glory of the things which concern mine infirmities.

31 The God and Father of our Lord Jesus Christ, which is blessed for evermore, knoweth that I lie not.

32 In Damascus the governour under Aretas the king kept the city with a garrison, desirous to apprehend me:

33 And through a window in a basket was I let down by the wall, and escaped his hands.

CHAP. XII.

1 He commendeth his apostleship, glorying not of his revelations, but of his infirmities.

IT is not expedient for me doubtless to glory. I will come to visions and revelations of the Lord.

2 I knew a man in Christ above fourteen years

CHAP. VII.

God with idols? for ye are the temple of the living God, as God hath said, I will dwell in them, and walk in *them*, and I will be their God, and they shall be my people.

17 Wherefore come out from among them, and be ye separate, saith the Lord, and touch not the unclean thing, and I will receive you,

18 And will be a Father unto you, and ye shall be my sons and daughters, saith the Lord Almighty.

CHAP. VII.

1 *He proceedeth in exhorting them to purity of life,* 2 *and to bear him (the affection he hath to them.*

HAving therefore these promises (dearly beloved) let us cleanse ourselves from all filthiness of the flesh and spirit, perfecting holiness in the fear of God.

2 Receive us; we have wronged no man, we have corrupted no man, we have defrauded no man.

3 I speak not this to condemn you: for I have said before, that ye are in our hearts to die and live with *you*.

4 Great is my boldness of speech toward you, great is my glorying of you, I am filled with comfort, I am exceeding joyful in all our tribulation.

5 For when we were come into Macedonia, our flesh had no rest, but we were troubled on every side; without were fightings, within were fears.

6 Nevertheless, God that comforteth those that are cast down, comforted us by the coming of Titus.

God with idols: for ye are the temple of the living God, as God hath said, I will dwell in them, and walk in *them*, and I will be their God, and they shall be my people.

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6 Neverthelesse, God that comforteth those that are cast down, comforted us by the coming of Titus.

II. CORINTHIANS.

26 In Journeying often, in perils of waters, in perils of robbers, in perils by mine own countrymen, in perils by the heathen, in perils in the city, in perils in the wildernesse, in perils in the sea, in perils among false brethren.

27 In weariness and painfulnesse, in watchings often, in hunger and thirst, in fastings often, in cold and nakednesse.

28 Besides those things that are without, that which cometh upon me daily, the care of all the churches.

29 Who is weak, and I am not weak? who is offended, and I burn not?

30 If I must needs glory, I will glory of the things which concern mine infirmities.

31 The God and Father of our Lord Jesus Christ, which is blessed for evermore, knoweth that I lie not.

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CHAP. XII.

He commendeth his apostleship, glorying not of his revelations, but of his infirmities.

IT is not expedient for me, doubtlesse, to glory, I will come to visions and revelations of the Lord.

2 I knew a man in Christ above fourteen yeers ago, whether in the body I cannot tell, or whether out of the body I cannot tell: God knoweth: such a man up to the third heaven.

CHAP. XVI.

Commendeth Timothy.

Admonitions.

N[illegible]ection for the saints, as [illegible] the churches of Gala-

2 [illegible] week, let every one of [illegible] hath prospered him, [illegible] when I come.

3 [illegible]ever you shall approve [illegible]nd to bring your libe-

4 [illegible] go also, they shall go

5 [illegible]ou, when I shall passe [illegible]o passe thorow Mace-

6 [illegible]l abide, yea, and win-

7 [illegible]ing me on my journey,

8 [illegible]ow by the way, but I [illegible]u, if the Lord permit.

9 [illegible]us untill Pentecost.

10 [illegible]ectuall is opened unto [illegible]saries.

11 [illegible], see that he may be [illegible] worketh the work of [illegible]

12 [illegible]spise him: but conduct

sorrowed after a godly sort, what carefulnesse it wrought in you, yea, *what* clearing of your selves, yea, *what* indignation, yea, *what* fear, yea, *what* vehement desire, yea, *what* zeal, yea, *what* revenge! In all things ye have approved your selves to be clear in this matter.

12 Wherefore though I wrote unto you, *I did* it not for his cause that had done the wrong, nor for his cause that suffered wrong, but that our care for you in the sight of God might appear unto you.

13 Therefore we were comforted in your comfort: yea, and exceedingly the more joyed we for the joy of Titus, because his spirit was refreshed by you all.

14 For if I have boasted any thing to him of you, I am not ashamed; but as we spake all things to you in truth, even so our boasting which I made before Titus, is found a truth.

15 And his inward affection is more abundant toward you, whilest he remembreth the obedience of you all, how with fear and trembling you received him.

16 I rejoyce therefore that I have confidence in you in all things.

CHAP. VIII.

1 *He stirreth them up to contribute to the saints.*

MOreover, brethren, we do you to wit of the grace of God bestowed on the churches of Macedonia;

2 How that in a great triall of affliction, the abundance of their joy and their deep poverty

lacking to me, the bretheren which came from Macedonia supplied, and in all things I have kept my self from being burthensome to you, and so will I keep my self.

10 As the truth of Christ is in me, no man shall stop me of this boasting in the regions of Achaia.

11 Wherefore? because I love you not? God knoweth.

12 But what I do, that I will do, that I may cut off occasion from them that desire occasion, that wherein they glory, they may be found even as we.

13 For such are false apostles, deceitful workers, transforming themselves into the apostles of Christ.

14 And no marvell, for Satan himself is transformed into an angel of light.

15 Therefore it is no great thing, if his ministers also be transformed as the ministers of righteousnesse, whose end shall be according to their works.

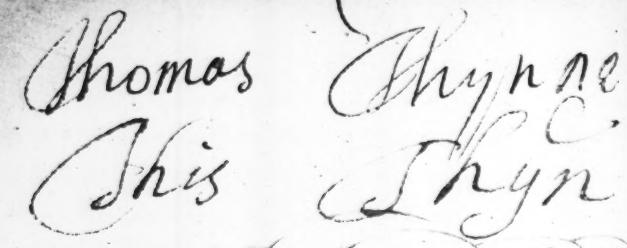
16 I say again, Let no man think me a fool; if otherwise, yet as a fool receive me, that I may boast my self a little.

17 That which I speak, I speak it not after the Lord, but as it were foolishly in this confidence of boasting.

18 Seeing that many glory after the flesh, I will glory also.

19 For ye suffer fools gladly, seeing ye your selves are wise.

20 For ye suffer if a man bring you into bondage, if a man devour you, if a man take of you,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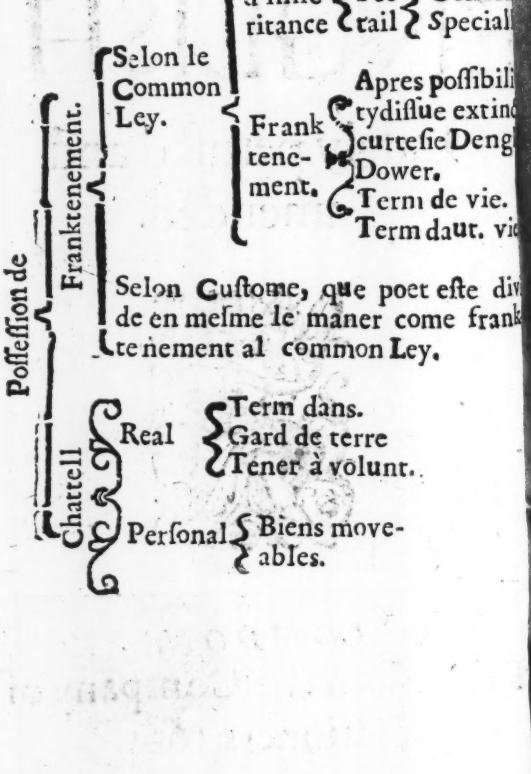
A Figure of the diviſion of poſſeſſions.



Fee Simple.

TEnant in fee ſimple is he which hath Lands or Tenements to hold to him and to his heires for ever: and it is called in Latine, Feodum ſimplex; for Feodum is called inheritance, and Simplex is as much to ſay, as lawful or pure, and ſo Feodum ſimplex, is as much to ſay, as lawful or pure inheritance: For if a man will purchaſe Lands or Tenements in fee ſimple, it behoveth him to have theſe words in his purchaſe, To have and to hold unto him and to his heirs: for theſe words (his heirs) make the eſtate of inheritance, Anno 10. Hen. 6. fol. 38. for if any man purchaſe Land in theſe words: To have and to hold to him for ever: or by ſuch words: To have and to hold to him and to his Aſſigns for ever, in theſe two Caſes he hath none eſtate but for term of life, for that that he lacketh theſe words (his heirs) which words onely make the eſtate of inheritance in all feoffments and grants.

And if a man purchaſe Lands in fee ſimple & die without iſſue, every one that is his next Con-

ſin collateral, of the whole blood, how far ſoe
that he be from him of degree, may inherit a
have the ſame land as heire unto him. But
there be father and ſon, and the father hath a b
ther which is uncle unto the ſon, & the ſon pu
chaſed land in fee ſimple, and dieth without iſſu
living the father, the uncle ſhall have the Land,
heir unto the ſon, and not to the father (yet t
father is more nigh of blood unto the ſon)
that that there is a ground in the Law, that t
heritance may lineally deſcend, but not linea
aſcend: yet if the ſon in ſuch caſe die witho
iſſue, and his uncle entreth into the land as h
unto the ſon, (ſo as he ought by the Law) a
after if the uncle deceaſe without iſſue living t
father, then ſhall the father have the land as h
unto the uncle, and not as heir unto the ſon, f
that that he cometh unto the land by collater
deſcent, and not by lineal aſcenſion.

And in ſuch caſe where the ſon purchaſe
land in fee ſimple, and dieth without iſſue, the
of his blood on the fathers ſide ſhall inherit
as heir unto him before any of the blood of t
mothers ſide. But if he have no heir on the fa
thers ſide, then ſhall the land deſcend unto h
heir on the mothers ſide. And this is the opinio
of the Juſtices, M. 12. E. 4 fol. 35. But ther
it was holden, if any land deſcend unto a ma
by the Fathers ſide which dieth without iſſue
that his next heir on the fathers ſide ſhall inhe
rit unto him, that is to ſay, the next of blood o
the father of the grandfathers ſide And for de
fault of ſuch an heir they that be of the father
blood of the part of the mother of the fa-her

(that

(that is to say) the Grandmother ought to inhe-
. And if there be no such heir on the Fathers
, then the Lord shall have the land by Es-
eat. And so it is if a man take a wife inhe-
rix in fee simple which hath issue a son and di-
, and the son entreth into the tenements as
n and heir unto his mother, and after dieth
ithout issue, the heires on the mothers side
ght to inherit the tenements, and not the heirs
the fathers side.

And if there be no heires on the mothers side
en the Lord of whom the same Land is holden
all have the same Land by Escheat. In the
me manner it is if Lands descend unto the son
the fathers side, which entreth and after di-
h without issue, the Land shall descend unto
e heires on the Fathers side, and not unto the
eires on the mothers side. And if there be none
eires on the Fathers side, then the Lord of
hom the land is holden shall have the same
and by Escheat. And so ye may see the diver-
ity, where the son purchaseth Lands in fee sim-
le, and where he cometh unto those lands or te-
nements by descent on the fathers side, or on the
mothers side.

Also, if there be three brethren, and the middle
brother purchaseth land in fee simple and dyeth
without issue, the elder brother shall have the
land by descent and not the younger. Also if there
be three brethren, and the youngest brother pur-
chaseth land in fee simple and dieth without is-
sue, the elder brother shall have the land by de-
scent, and not the middle brother, for that that
the elder brother is more worthy of blood.

And it is to be underſtood, that no man ſhall have land in fee ſimple by deſcent as heir unto any man, unleſs he be his heir of the whole blood. For if a man have iſſue two Sons by two Venters, and the elder purchaſeth Land in fee ſimple and dieth without iſſue, the younger brother ſhall not have the land, but the uncle of the elder brother, or ſome other his nigh Couſin ſhall have it, for that that the younger is but of the halfe blood to the elder brother. And if a man have a ſon and a daughter by one Venter, and a ſon by another Venter, and the ſon by the firſt Venter purchaſeth Land in fee ſimple and dyeth without iſſue, the Siſter ſhall have the Land by deſcent as heir unto her brother, and not the younger brother, for that that the ſiſter is of the whole blood to her elder brother.

And alſo where a man is ſeiſed of land in fee ſimple, and he hath iſſue a ſon and a daughter by one Venter, and a ſon by another Venter & dyeth, and the elder ſon entreth, and dyeth without iſſue, the daughter ſhall have the land, and not the younger ſon, and yet is the younger ſon Heire unto his father, but not unto his brother. But if the elder ſon enter not into the land after the death of his father, but dieth before entry be made by him, then the younger brother may enter and have the land as heir unto his Father. But where the elder ſon in the caſe aforeſaid, entreth after the death of his father, and thereof have poſſeſſion, then the ſiſter ſhall have the land: Quia poſſeſſio fratris de feodo ſimplici, facit ſororem eſſe hæred'. For the poſſeſſion of the brother in fee ſimple maketh the ſiſter to be heir.

But if there be two brethren by divers venters, and the elder is seised in fee simple and dyeth without issue, and his uncle entreth as heire unto him, which also dyeth without issue, then the younger brother may have the land as heire unto his uncle, because he is of the whole blood to him, though he be but of halfe blood unto his elder brother.

And it is to be understood that this word (Inheritance) is not onely understood where a man hath lands or tenements by descent of heritage: But also every fee simple or fee taile that a man hath by his purchase, may be said inheritance, for that that his heires may inherit them. For, in a writ of Right that a man bringeth of land, that was of his own purchase, the writ shall say, Quam clamat esse jus & hæreditatem suam, that is to say, which he claimeth to be his right, and his inheritance. And so it shall bee said in divers other writs, which a man or a woman bringeth of their own purchase, as it appeareth by the Register.

And of such things as a man may have a mannall occupation, possession, or receit, as of Lands, Tenements, Rents, and such other, a man shall say in his pleading, and way of bar, that one such was seised in his demesne as of fee. But of such things that lye not in mannall occupation, &c. as of Advowson of a Church, and such manner things: There he shall say, that he was seised as of fee, and not in his demesne as of fee. And in Latine it is in the same case said, Quod talis fuit seisitus in dominico suo ut de feodo, that is to say, that such a one was seised

in his demesne as of fee, and in the other, Quod talis fuit seisitus ut de feodo, that is to say, that one such was seised as of fee.

And note well, that a man may not have a more large nor greater estate of inheritance, than fee simple.

Also purchase is called the possession of lands or tenements that a man hath by his deed, or by his agreement, unto which possession he commeth not by descent of any of his ancestors, or of his cousins, but by his own deed.

Fee Taile.

TEnant in fee taile, is by force of a statute of Westminster the second, capitulo primo: For at the Common Law before the said statute, all inheritances were fee simple. For all the gifts which be specified within the said statute, were fee simple conditionally, as it appeareth by the rehearsal of the statute. And now by the same statute tenant in the taile is said in two manners, that is to say, tenant in taile general, and tenant in taile special.

Tenant in taile general, is where Lands or Tenements be given to a man and to his heires of his body begotten: In this case it is said general taile, for that that whatsoever woman that the tenant taketh to wife: if he have many wives, and by each of them hath issue, yet each one of these issues by possibility may inherit the tenements by force of the said gift, because that every such issue is of his body ingendred.

In the same manner it is where lands and tenements

ments be given to a woman and to the heires coming out of her body, howbeit that she have many husbands, yet the issue that she may have by each husband, may inherit as issue in the taile, by force of such gifts. And therefore such gifts be called general taile.

Tenant in taile special, is, where Lands and Tenements be given unto a man and his wife, and the heirs of their two bodies begotten. In such case none may inherit by force of such gift, but those that be ingendred between them two, and it is called especial taile. for that if the wife die, and he taketh another wife and hath issue, the issue of the second wife shall never inherit by force of such gift: Nor also the issue of the second husband if the first husband die.

In the same manner it is, where Lands and Tenements be given by a man unto another with a wife, which is the Daughter or Cousin to the giver in Frankmarriage. Which gift hath inheritance by these words (Frankmarriage) unto it annexed, howbeit that it be not expressly said or rehearsed in the gift, that is to say, That these Donees shall have these Lands or Tenements to them and to their Heirs between them two ingendred, and this is said especial taile for that the issue of the second wife may not inherite.

And note well that this word Talliare, is to say, to set unto some certainty, or else limit unto some certain inheritance: And for that that it is limited and set in certaine, what issue shall inherit by force of such gifts, and how long that the inheritance shall endure: Therefore it is cal-

led

led in Latine, Feodum taliatum, i. hæreditas in quandam certitudinem limitata. For if tenant in generall taile dye without issue, the donor or his heires shall enter as in their reversion: In the same wise it is of the tenant in the taile speciall, &c. For in every gift of the taile without more saying, the reversion of fee simple is in the donor.

And the donees and their heires shall doe to the donor, and to his heires such services as the donor doth unto the Lord next above: Except the donees in frankmarriage, which shall hold quietly from every manner service, (unlesse it be for Fealty) untill the fourth degree bee past. And after that the fourth degree is past, the issue in the fifth degree, and so forth, the other issues after him shall hold of the donor and of his heires as they had ober, as is aforesaid

And the degrees in frankmarriage shall bee accounted in such manner, that is to say from the donor to the donees in frankmarriage, the first degree for that that the wife, that is one of the donees ought to be daughter, sister, or other cosin to the donor: And from the donees unto their issue shall be accounted the second degree: And from their issue unto their issue, the third degree. &c.

And the cause is for that after every such gift, the issues that come of the donor, and the issues that come of the donees after the fourth degree past of both parties in such forme to be accounted, may be betwixt them by the Law of holy Church intermarry. And that the donee in frank

marriage

marriage shall be the first degree of the foure degrees, a man may see in a Plea upon a Writ of Right of Ward, Anno 31 Edward 3. where the Plaintiff pleadeth that his Eyel or Grandfather was seised of certaine Lands &c. And that he held of another by Knights service &c. which gave the land unto one Ralph Holland with his sister in frankmarriage &c And also these tailes beforesaid be specified in the said Statute of Westminster the second

And there be divers other estates in the taile, howbeit that they be not specified by expresse words in the said Estatute, but they be taken by the equity of the Statute: As if Lands be given unto a man and to his heires males of his body ingendred, in such case his heire male shall inherit, and the issue female shall never inherit: yet in these other tailes aforesaid it is otherwise In the same manner it is if Lands be given to a man and to his Heires Females of his body ingendred. In this case his issue Females shall inherit by force and forme of the said gift, and not the issue male, for that in such cases where the gift is who ought to inherit, and who not, the will of the Donor shall be observed

And in case where Lands be given unto a man and to his heires males issuing of his body, and he hath issue two sons and deceaseth, the elder son entreth as heire male, and hath issue a daughter and deceaseth, his brother shal have the Land and not the daughter, for that the brother is heire male. But it shall be otherwise in these other tailes aforesaid, which be specified in

the

the said Statute, the daughter shall inherit before the brother.

And if Lands be given unto a man, and to his heires males of his body ingendred, and he hath issue a daughter, which hath issue a son and deceaseth, and after that the Donee deceaseth: in this case the son of the daughter shall not inherit by force of the taile, for that, whosoever shall inherit by force of a gift in the taile made unto the Heires males, behoveth to convey his descent alway to the Males, Mich. decimo octavo Edwardi tertii fol. 25. But in such case the Donor shall enter, for that the Donee is dead without issue male in the Law. Insomuch that the issue of the daughter may not convey to him the descent by heir male. And in the same manner it is, where lands be given to a man, and to his wife, and to his heirs males of their two bodies ingendred.

Also if Tenements be given to a man, and his wife, and to the heirs of the body of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands be given to the husband and to the wife, and to the heirs of the husband which he ingendreth of the body of his wife. In this case the husband hath estate in the special taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendred: then the wife hath estate in the special taile. and to the husband but for terme of life. But if Lands be given

given to the husband and the wife, and to the heires that the husband engendreth on the body of the wife: in this case both have estate in the taile, for that this word (Heirs) is limited no more to the one than to the other.

Also, if Lands be given to a man and to his heirs that he ingendreth on the body of his wife: In this case the husband hath estate in the taile special, and the wife nothing.

Also if a man have issue a Son, and deceaseth and the land is given to the Son, and to the heires of the body of his father ingendred, this is a good taile, and yet the father was dead at the time of the gift.

Also there be many other estates in the taile by the equity of the said Estatute, that be not specified here. But if a man give Lands or Tenements to another, to have and to hold to him and to his heirs males, or to his heirs females, he to whom such gift is made hath fee simple for that it is not limited by the gift of what body the issue male or female shall be, and so it may not in any thing be taken by the equity of the said Estatute, and therefore he hath fee simple.

Tenant in taile after possibility of issue extinct.

TEnant in the taile after possibility of the issue extinct, is, Whereas Lands or Tenements be given unto a man and to his wife in special taile, if one of them decease without issue he that survyveth is tenant in the taile after possibility of issue extinct. And if they have

issue,

iſſue, during the life of the iſſue, he that ſurviveth ſhall not be ſaid Tenant in the taile after poſſibility of iſſue extinct; yet if the iſſue decease without iſſue, ſo that there be none alive that may inherit by force of the taile, even he that ſurviveth of the Donees is Tenant in the taile after poſſibility of iſſue extinct.

Alſo, if Lands be given to a man and to his Heirs that be ingendred of the body of his wife. In this caſe the wife hath nought in the Tenements, and the husband is ſeiſed as Donee in ſpecial taile. And in this caſe if the wife decease without iſſue of her body ingendred by her husband, then the husband is tenant in the taile after poſſibility of iſſue extinct.

And note well, that none may be Tenant in the taile after poſſibility of iſſue extinct, but one of the Donees, or the Donee in ſpecial taile, for the Donee in general taile may never be ſaid tenant in the taile after poſſibility of iſſue extinct, for that alway during his life, he may by poſſibility have iſſue that may inherit by force of the ſame taile. And ſo in the ſame manner the iſſue that is heir unto the Donees in a ſpecial taile, may not be ſaid Tenant in taile after poſſibility, &c. cauſa qua ſupra.

And tenant in taile after poſſibility of iſſue extinct ſhall never be puniſhed of waſte, for the inheritance that once was in him, Anno 10. Hen. 6. fol. 1. But he in the reverſion may enter if he doth alien in fee, Anno 45. Edw. 3. fol. 22.

Tenant

Tenant by the Curteſie of England.

TEnant by the Curteſie of England, is where a man taketh a wife ſeiſed in fee ſimple, or in fee taile generall, or as heire in the taile ſpeciall, and hath iſſue by the ſame wife male or female borne alive, the iſſue after being dead or alive, if the wife deceaſe the husband ſhall hold the ſame during his life by the Law of England, and this is called tenant by the Curteſie, for that it is not uſed in any other Realme but onely in England. And ſome ſay that hee ſhall not be ſaid tenant by the Curteſie, but if the child that he hath by his wife be heard cry, for by the cry is the proofe that the child that he had by his wife was borne alive.

Tenant in Dower.

TEnant in Dower is, where a man is ſeiſed of certaine lands or tenements in fee ſimple or in generall taile, or as heire in the taile ſpeciall, and taketh a wife & deceaſeth, the wife after the deceaſe of her husband ſhall be endowed of the third part of ſuch lands or tenements that were her husbands any time during the coverture, to have and to hold to the ſame wife in ſeverality, by meets and bounds for terme of her life, whether ſhe have by her husband iſſue or none, and of what age that the wife be, ſo that ſhe paſſe the age of nine yeares at the time of her husbands death, or elſe ſhe ſhall not be endowed.

And note well, that by the common Law the wife

wife ſhall not have for her dower but the third part of the Tenements, which were her husbands during the Eſpoufals. By cuſtome of ſome Countrey ſhe ſhall have the halfe, and by cuſtom of ſome Town or Borough, ſhe ſhall have the whole: and in all theſe caſes ſhe ſhall be ſaid tenant in Dower.

Alſo there is two other manner of Dowers, that is to ſay, Dower called Dowment at the Church doore, and Dower called Dowment by the Fathers aſſent. Dowment at the Church doore is, where a man of full age is ſeiſed in fee ſimple, which ſhall be wedded unto a wife, when he cometh to the Church doore, and there after affiance and truth plight made between them, endoweth his wife of his whole land, or of the halfe, or leſs parcel, and there openly declareth the quantity, and the certainty of his land that ſhe ſhall have for her Dower: In this caſe the wife after the death of her husband ſhall enter into the ſaid quantity of Land of which her husband endowed her, without the aſſignment of any man. Dowment by the fathers aſſent is, where the Father is ſeiſed of lands or tenements in Fee, and his ſon and heire apparent (when he is wedded) endoweth his wife at the Church doore of parcel of the lands, or tenements of his fathers, by the aſſent of his father, and aſſigneth the quantity of the parcels: In this caſe after the death of the ſon, the wife ſhall enter into the ſame parcel without the aſſignment of any other. But it hath been ſaid in this caſe, that it behooveth the wife to have a Deed of the father, proving his aſſent and conſent of ſuch endowment.

ient. And if after the death of her husband she enter and agree to any such Dower of the said two Dowers at the Church door then she is concluded to claim any other Dower by the common Law of any Land or Tenements, which were of the said husband. But if she will, she may refuse such Dower at the Church door, and then she may be endowed after the course of the Common Law And note well that no wife shall be endowed of the fathers assent, in the form aforesaid, save where the Husband is son and heir apparant to his father.

Inquire of these two cases of endowment at the Church door, &c if the wife at the time of the death of her husband passe not the age of nine yeares, if she shall have such dower or no.

And note well, that in all cases where the certainty appeareth what Lands or Tenements the wife shall have for her Dower, the wife may enter after the death of her Husband, without assignment of any other: But where the certainty appeareth not, as to be endowed of the third part, to have in severall, or to be endowed of the halfe after the custome to hold in severalty: In such cases it behoveth that her Dower be unto her assigned after the death of her Husband, because it is not limitted before the assignment, what parts of Lands or Tenements she shall have for her Dower. But if there be two Joyntenants of certaine Lands in Fee, and the one alieneth that that to him pertaineth and belongeth, to another in Fee, which taketh a wife and after dieth: In this case the Wife for her

dower shall have the third part of the halfe th
her husband purchased to hold in common, a
occupy in common as her part amounteth u
the heire of her husband, and with the o
Joyntenant which alien not, for that in s
case her Dower may not be assigned by me
and bounds.

And it is to be understood, that the wife sh
not be endowed of lands or tenements that
husband joyntly held with another at the t
of his death. But where he holdeth in comm
otherwise it is, as in the case aforesaid. And
is to wit, that if the tenant in taile endow
wife at the Church doore as is aforesaid, t
shall serve for little or nought to his wife,
that, that after the death of her husband the
in the taile may enter upon the possession of
wife, and so may he in reversion if there bee
issue in the taile alive.

Also, if a man seised in Fee simple being with
in age, endow his wife at the Church doore, a
dyeth, and the wife entreth: In this case t
heire of the husband may put her out. But
therwise it is as it seemeth where the father
seised in Fee, and the son within age, endo
his wife of his fathers assent, the father th
being of full age.

And there is another Dower which is call
Dowment De la pluis beale. And that is in su
case, that a man is seised of forty acres of lan
and he holdeth twenty of the said forty acres
one man by Knights service, & the other twen
acres of another in socage, and taketh a wif
and hath issue a son, and dyeth, his sonne bein
within

within the age of fourteen years, and the Lord of whom the land is holden by Knight service, entreth into the twenty acres of Land holden of him and them hath and occupieth as Warden in Chivalry during the Childs nonage, and the Childs mother entreth in the remnant, and it occupieth as Garden or Warden in Socage. If in this case the Wife bring a Writ of Dower against the Warden in Chivalry, to be endowed of the Tenements holden by Knights Service in the Kings Court or in any other Court, the Garden in Chivalry may plead in such case all the matter, and shew how the Wife is Warden in Socage, as is aforesaid, and pray that it may be adjudged by the Court, that the wife endow her selfe of the most faire called Pluis beale, of the tenements that she hath as Warden in Socage, after the value of the third part that she claimeth to have of the tenements in Chivalry by her Writ of Dower, and if the Wife may not gainsay it, then the judgement shall be made, that the Warden in Chivalry shall hold the lands holden of him during the nonage of the child quite rem the woman, &c. And that the woman may endow her selfe of the most faire part of the lands that she hath as Warden in Socage to the value of the third part that the Warden in Chivalry hath &c.

And after such judgement given, the Wife may take her neighbours, and in their presence endow her selfe by meets and bounds of the faire part of the tenements that she hath as Warden in Socage, to the value of the third part of the Lands that the Warden in Chivalry hath,

and that to have and to hold for terme of her l
And such Dower is called Dower of the fait
part, or De pluis beale.

With this agreeth P. 45. Edw. 3. fol. 4. W
there it was said, that after the time that
heire comes to his full age, the wife shall ha
a new action of Dower against the heire, to b
endowed of the third part of all that the man h
ed seised. And note well that such dowm
may not be, but where the judgement is gi
in the Kings Court, or in some other Cour
And the wife may do this for saluation of the
state of the Warden in Chivalry dur-ing t
nonage of the child. And so you may see five m
ner of dowers, that is to say Dower by t
common Law, Dower by Custome, Dower
the Church door, Dower at the Fathers estu
and Dower of the most faire. And remembe
that in every case where a man taketh a wife se
sed of such estate of tenements, &c. so that th
issue that he hath by his wife may by possibility
inherit the same tenements of such estate th
the wife hath as heire to the wife: In such ca
after the wife is dead, he shall have the same te
nements by the curtesie of England, and other
wise not.

And also in every case where the wife taket
an husband seised of such estate of tenements o
so that by possibility it may happen the wife m
have some issue by her husband, and that th
same issue may by possibility inherit the same te
nements of such estate that the husband had a
heire to his father, of such tenements she sha
have her dower, and otherwise not. For if th
tenement

enements be given unto a man and to his heirs hat he getteth on his wives body, in such case he wife hath nought in the tenements, and the husband hath estate but as doues in special tale: Yet if the husband dye without issue, the same wife shall be endowed of the same tenements, or that the issue that she by possibility might have had by the same husband, may inherit the same enements. But if the wife decease, living the husband, which after taketh another wife, the econd wife shall not be endowed in this case; Causa qua supra.

A man was seised of certain lands, and ook a wife, and after aliened the same Lands with warranty, and after the Feoffor and the Feoffee dyed, and the wife of the Feoffor bringeth an action of Dower against the issue of the Feoffee, and he voucheth the heire of the Feoffor, nd during the voucher and not termined, the wife of the Feoffee bringeth an action of dower gainst the heire of the Feoffee, and demandeth he third part of al that her husband was seised, nd would not demand the third part of those wo parts that her husband was seised, it was djudged that she should have no judgment until he time that the other plea were determined.

And also note that Vavisor saith, that if a man e seised of lands and committeth Felony, and lieneth, and after is attainted, the wife shall have good action of dower against the Feoffee. But if it be escheated unto the King, or unto the Lord, she shall have no writ of dower. And so te the diversity, and inquire the cause.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth Lands or Tenements to another for term of life of the Lessee, or for term of life of another man: In such case the Lessee is tenant for terme of life. But by common language, he that holdeth for terms of his own life, is called tenant for terme of life. and he that holdeth for term of another mans life, is called Tenant for terme of another mans life. And it is to be understood, that there is Feoffor and Feoffee, Donor and Donee, Lessor and Lessee. The Feoffor is properly where a man infeoffeth another in any Lands or Tenements in fee simple he that maketh the Feoffment is called the Feoffor. and he to whom the Feoffment is made, is called the Feoffee. And the Donor is properly, where a man giveth certain Lands or Tenements to another in the taile, he that maketh the gift is called Donor, & he to whom the gift is made is called Donee. And Lessor is properly where a man letteth to another certaine Lands or Tenements for terme of life for term of years, or to hold at will, he that maketh the Lease is called Lessor, and he to whom the Lease is made is called Lessee: and every one that hath estate in Lands or Tenements for terme of his own life, or for term of another mans life is called a Tenant of freehold. And none of lesse estate may have freehold but they of greater estate may have freehold, for tenant in Fee simple hath freehold, and Tenant in the taile hath also freehold.

Tenant

Tenant for term of years.

TEnant for terme of years is, where a man letteth Lands or Tenements to another for term of certain years after the number of yeares that is accorded between the Lessor and the Lessee and when the Lessee entreth by force of the lease, then is he tenant for term of years, and if the Lessor in such case reserve to him a yearly rent upon such a lease, he may chuse for to distrain for the rent in the tenements letten, or else he may have action of debt for the arrerages against the Lessee. But in such case it behooveth that the Lessor be seised in the same tenements at the time of his lease, for it is a good plea for the Lessee to say, that the Lessor had nothing in the tenements at the time of the lease, except the lease be made by deed indented in which case then such plea lyeth not for the Lessee to plead

And it is to be understood, that in a Lease for terme of yeares, by deed or without deed it needeth no livery of seisin to be made to the Lessee, but he may enter whensoever he will by force of the same Lease. But of Feoffements made in the Countrey or gifts in the taile, or Leases for terme of life, in such cases where freehold shall passe, if it be by deed or without deed, it behooveth to have livery of seisin, &c. But if a man let lands or tenements by deed or without deed for terme of yeares, the remainder over to another for terme of life, or in the taile, or in fee, then in such case it behooveth that the Lessor make livery of seisin to the Lessee for terme of

yeares, or else there shall nothing passe to them in the remainder, though the Lesse enter in the tenements, and if the termor in such case enter before any such livery of seisin made unto him, then is the freehold & the reversion in the Lessor. But if he make only livery of seisin unto the Lessee, then is the freehold with the fee to them in the remainder after the form of the grant, and will of the lessor.

And if a man will make a feoffment by deed or without deed of Lands or Tenements that he hath in many Townes in one Shire, if the livery of seisin be made in one parcel of the Tenements in one Town in the name of all, it sufficeth for all the other lands or tenements comprehended in the same feoffment, in all other townes in the same Shire. But if a man make a deed of feoffment of Lands or Tenements in divers Shires, there it behoveth him to have in every Shire a livery of seisin. And in some case a man shall have by the grant of another fee simple, fee taile, or freehold without livery of seisin. As if two men be, and each of them be seised of a quantity of land within one Shire, and the one granteth his land to the other in exchange for that land that the other hath, and in the same manner the other granteth his land unto the first grantor in exchange for the land that the first grantor hath: In this case each may enter in the others lands so taken in exchange, without any livery of seisin. And such exchange made by words of tenements within the same Shire without any writing, is good enough. And if the Lands or tenements be in divers Shires, that is

to

to say, if that the one have in one shire, and that the other have in another shire, it behooveth to have a deed indented made between them of such exchange

And note that in exchanges it behooveth that the estates that both parties have in the Lands to exchanged, be equal: For if the one willeth and granteth that the other shall have his Land in the taile for the land that he hath of the grant of the other in Fee simple, though the other agree to that, yet this exchange is but void, for that the estates be not even

In the same manner it is where it is granted and agreed between them, that the one shall have in the one Land fee taile, and the other shall have in the other Land but terme of life. Or if one shall have in the one Land fee taile general, and the other in the other land Fee taile especial, &c. So alway it behooveth that in exchange the estate of both parties be even, that is to say, if the one have fee simple in the one Land, that the other shall have such estate in the other Land, and if the one have fee taile in the one Land, then the other shall have likewise in the other Land Et sic de aliis statibus But it is nothing to charge of the even value of the Lands, for though that the Land of the one is so much more in value than the Land of the other this is nothing to purpose, so that the estates made by the exchange be even, and in exchange by two grants: for every party granteth his Land to the other in exchange, and in each of their grants mention shall be made of the exchange.

And if a man let Land to another for term of

yeares,

yeares, though the Lessor dye before the Lessee enter into the tenements yet may he enter into the tenements after the death of the Lessor, for that that the Lessee by force of the lease hath right incontinent to have the tenements after forme of the Lease. But if a man make a deed of Feoffement unto another, and a letter of attourney to a man to deliver to him seisin by force of the same deed, yet if the livery of seisin be not made in the life of him that made the deed, it availeth not, for that the other hath no manner of right to have the tenements after the purport of the deed, before the livery of seisin &c. And if no livery bee made, then after the death of him that made the deed, the right of such tenements is incontinently in his heire, or in some other. Also if tenements be let to a man for terme of halfe a yeare, or for term of a quarter of a year, &c. In such case, if the Lessee make waste, the Lessor shall have against him a writ of waste, and the writ shall say, Quod tenet ad terminum annorum. But he shall have a speciall declaration upon the truth of this matter, and the plea shall not abate the writ, for that that he may have no other writ upon the matter. Anno 7 H. 7. fol. 1.

Tenant at Will.

TEnant at will is, where Lands or Tenements be letten by a man unto another, To have and to hold to him at the will of the Lessor, by force of which Lease the Lessee is in possession: In such case the Lessee is called tenant at will, for that he hath no certaine or sure estate,

eſtate, for the Leſſor may put him out at what time it pleaſeth him: yet if the Leſſee ſow the land, and the Leſſor (after the ſowing, and before that his graines be ripe) put him out, yet ſhall the Leſſee have his graines, and ſhall have free egreſſe and regreſſe to reap and to carry his graines, for that he will not at what time his Leſſor would enter upon him. Otherwiſe it is if tenant for terme of yeares before the end of his terme ſoweth the Land, and the terme end before that his graines be ripe: In this caſe the Leſſor, or he in the reverſion ſhall have the graines, for that the termor knew well the certainty of his terme, and when his terme ſhould be ended.

Alſo if a houſe be let to a man to hold at will, by force of which the Leſſee entreth into the houſe within which houſe he bringeth his houſhold ſtuffe, and after the Leſſor putteth him out, yet ſhall he have free entry, egreſſe and regreſſe in the ſame houſe by reaſonable time to carry his goods and houſhold ſtuffe. And if a man be ſeiſed of a houſe in fee ſimple, fee taile, or for terme of life, the which hath certaine goods within the ſame houſe, and maketh his Executors and deceaſeth, whoſoever after his death hath the houſe, yet his Executors have free entry, egreſſe and regreſſe to carry out of the houſe the goods of the Teſtator by a reaſonable time.

Alſo, if a man make a Deed of Feoffment unto another of certain land, and delivereth to him the Deed, but no livery of ſeiſin: in this caſe he to whom the Deed is made may enter into the Land, and hold and occupy it at the will of him

that

that made the deed, for that, that it is proved by the words of the deed that it is his will that the other shall have the land. But he that made the deed, may put him out when he will.

Also, if a house be let to hold at will, the Lessee is not holden to sustaine or repaire the house, as tenant for terme of yeares is holden to doe. But if the Lessee at will make voluntary waste, as in pulling downe of houses or in cutting or selling of trees, It is said that the Lessor shall have for that against him an action of trespasse. As if I deliver to a man my sheepe to dung or marle his land or mine oxen to eare his land, and he slayeth the beasts, I may well have an action of trespasse against him notwithstanding the delibery.

Also if the Lessor upon such lease at will reserve unto him a yearly rent, he may distraine for the rent behind, or have for that an action of Debt at his own choice Hill 6. Rich. 2 in a Replevin.

Tenant by Copy of Court Roll.

TEnant by Copy of Court Roll is as if a man be seised of a Mannor, within which Mannor there is a custome, and hath been used in time out of mind, that certaine Tenements within the same Mannor have used to have Lands or Tenements to hold to them and to their heires in fee simple, or in fee taile, or for terme of life, &c. at the will of the Lord after the custome of the same Mannor: and such a tenant may not alien the land by deed, for then the Lord may

may enter as in a thing forfeit to h'm. But if he will alien his land to another, him behoveth after some custome, to surrender the tenements in some Court, &c. into the Lords hands to the use of him that shall have the estate, in such forme or to such effect

Ad hanc curiam venit A. de B. & sursum reddidit in eadem Curia unum messuagium, &c. in manus domini, ad usum E. de A. & heredum suorum, vel hæredum de corpore suo exeunt, vel pro termino vitæ suæ &c. Et super hoc venit prædictus E. de A. & cepit de domino in eadem Curia messuagium prædictum, &c. habendum & tenendum sibi & hæredibus suis vel sibi & hæredibus de corpore suo exeuntibus, vel sibi & terminum vitæ suæ ad voluntatem domini, secundum consuetudinem manerii, faciend' & reddend' inde reddit' debit' servitia, & consuetudines inde prius debit', & de jure consueta. Et dat domino de fine &c. Et fecit domino fidelitatem, &c. That is to say, A. of B. cometh unto this Court, and surrendreth in the same Court a mease, &c. into the hands of the Lord, to the use of E. of A. and his heires, or the heirs issuing of his body, or for term of life &c and upon that comes the foresaid E. of A. and taketh of the Lord in the same Court, the aforesaid mease, &c. To have and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lords will, after the customs of the Mannor to do and yeeld therefore rents, debts, services and customes thereof before due and accustomed, &c. and gives the Lord for a fine, &c. and maketh unto the Lord his fealty, &c.

And

And ſuch Tenants be called Tenants by Copy of Court Roll, for that they have no other evidences concerning their Tenements, but the Copies of the Court Rolls: And ſuch Tenants ſhall not implead, nor be impleaded for their Tenements by the Kings Writ. But if they will implead other for their Tenements, they ſhall have a plaint made in the Court of the Lord in ſuch form, or to ſuch effect. A. de B. queritur verſus C. de D. in placito terræ, videlicet, de uno meſuagio, quadraginta acris ter', quatuor acris prati, &c. cum pertinentiis. Et facit proteſtationem ſequi querelam iſtam in natura brevis Domini Regis Aſſiſæ mortis anteceſſoris ad communem Legem, vel brevis Domini Regis Aſſiſæ novæ diſſeiſ. ad communem Legem. That is to ſay, A. B. complaineth againſt C. D. of a Plea of Land; that is to ſay, of a Meaſe, and forty Acres of Land, four acres of Medow, &c. with the appurtenances. And maketh proteſtation to ſue his plaint in nature of the Kings Writ of Aſſiſe of the death of his Anceſtor at the Common Law, or by a Writ of our Soveraign Lord the King, of Aſſiſe of novel diſſeiſin at the Common Law, or in nature of ſome other Writ, &c. pledges to proſecute F. G. &c. And though that ſome ſuch Tenants have inheritance after the cuſtome of the manner, yet they have none eſtate but at the Lords will, and after the courſe of the Common Law: for it is ſaid, If the Lord put them out, they have no other remedy but to ſue unto the Lord by petition: For if they had any other remedy they ſhould not be ſaid Tenants at the Lords will, after the cuſtome of the Manor, but

but the Lord will not breake the custome thatis reasonable in such cases. But Brian chiefe Justice saith, that his opinion hath alwaies been, and alwaies shall be, if such a tenant by custome (paying his services) be cast out by the Lord, he shall have an action of trespasse against him, H. 2. E. 4 fol. 80. And likewise was the opinion of Danby chiefe Justice M. E. 4 fol. 19. for he saith that the tenant by the custome is as well inheritable to have the land after the custome, as well as he that hath franktenement by the common Law.

TEnants by the Yard, be in such nature as tenants by Copy of Court Roll: But the cause for which they be called tenants by the Rodde, or Yard is, for that when they will surrender their Tenements into the Lords hand, to the use of another they shall have a little yard or rodde, by the custome and use in their hands, which they shall deliver unto the Steward or Bayliffe, after the custome and use of the manor, and he that shall have the land, shall take the same land in the Court, and his taking shall be entred in the Roll. And the Steward, or the Bayliffe according to the custome, shall deliver unto him that taketh the land, the same yard or another yard in the name of seisin And for this cause they be called Tenants by the yard. But they have none other evidence but Copy of the Court Roll.

And also in divers Lordships and Mannors there is such a custome, if such a tenant that holdeth by the Custome will alien his Lands, or Tenements, he may surrender his lands unto the

the Baylif, or to the Reeve, or to two honest men of the same Lordship, to the use of him that shall have the land to have in fee simple, fee taile, or for terme of life, &c. and all that shall be presented at the next Court, and then he that shall have the Land by Copy of Court Roll, shall have the same Land after the intent of the surrender. And it is to wit, that in divers Lordships, and divers Mannors, there be made divers customes in such cases, as to take Tenements, and as to plead, and as touching other things and customes to be done, and all that that is not against reason may well be admitted and allowed. And such Tenants that hold after the custome of a Seignory, or after the custome of a Mannor, though they have estate of inheritance after the custome of the Lordship, or of the Mannor, yet because they have not any freehold by the course of the Common Law they be called Tenants of base tenure.

And divers diversities there be between a tenant at will, which is in by the lease of his Lessor by the course of the common Law, and tenant after the custome of the Mannor in the forme aforesaid. For tenant at will after the custome may have estate of inheritance, as it is aforesaid at the Lords will after the customs and usage of the Mannor: But if a man have lands or tenements which be not within such Mannor or Lordship where such custom hath been used in the forme aforesaid, and will let such lands or tenements to another, to have and to hold to him and to his heirs at the will of his Lessor, these words, to the heirs of the Lessee be void, for this

is

is the cause, if the Lessee dye, and his heire enter, the Lessor shall have a good action of trespasse against him, but not so against the heire of the tenant by the custome in any case, &c. for that the custome of the Mannor in some case may help him to bar his Lord in an action of Trespasse.

Also tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenant at will oughe not. Also one by the custome shall do Fealty, and the other not. And divers other diversities there be between them.

Thus endeth the first Book.

Homage.

HOmage is the most honourable service, and most humble service of reverence, that a Franktenant may do to his Lord: For when the tenant shall make Homage to his Lord, hee shall be unqirt, and his head uncovered, and his Lord shall sit, and the tenant shall kneele before him on both his knees, and hold his hands joynely together between the hands of his Lord, and shall say thus: I become your man from this day forward of life and limme, and of earthly worship, and unto you shall be true and faithful, and beare you faith for the tenements that I claime to hold of you, (saving the faith that I owe unto our Soveraign Lord the King.) And then the Lord so sitting shall kisse him.

But if an Abbot or Prior, or any other man of Religion shall make homage unto his Lord, hee shall not say I become your man, for that he hath professed himselfe onely to bee Gods man: But hee shall say thus, I doe you homage, and unto you shall be true and faithfull, and beare you faith for the tenements that I claime to hold of you: Saving the faith that I owe

unto

unto our Soveraign Lord the King.

Also if a woman sole shall make Homage unto the Lord she shall not say, I become your woman, for that is not convenient for a woman to say that she shall become a woman to any but only to her husband when she is wedded: But she shall say I make unto you homage and to you shall be true and faithfull and shall bear you faith for the tenements that I hold of you, saving the faith that I owe to our Soveraigne Lord the King.

But if a man have severall tenancies which he holdeth of severall Lords, that is to say, every tenancy by Homage: Then when hee maketh Homage unto one of the Lords he shall say in the end of his Homage, Saving the faith that I owe unto the King, and unto my other Lords.

And note well, that none make homage, but such as have estate in fee simple, or in fee taile in his own right, or in any other mans right: For it is a ground in the Law that he that hath estate but for terme of life, shall make no homage nor take no homage.

For if a woman have lands or tenements in fee simple, or in fee taile, which she holdeth of her Lord by homage, and taketh a husband, and hath issue, then the husband in the life of the wife shall make homage, for that he hath title to have the Land by the curtesie, if he survive his wife: And also he holdeth in the right of his wife. But before issue be seen them, the homage shall be made in both their names: But if the wife decease before homage made by the husband

in the wives life, and the husband holdeth himself in as tenant by the Curtesie, he shall make no Homage unto his Lord, for that he hath then no estate but for terme of life. More shall bee said of homage in the tenure of homage ancestrell.

Fealty.

FEalty is as much to say as Fidelitas in Latine: and when a franktenant shall make Fealty unto the Lord, he shall hold his right hand upon a book, and shall say thus:

Heare you this my Lord, that I unto you shall be faithfull and true, and beare you faith for the lands and tenements, that I claime to hold of you, and truly to you shall doe the customes and services that I ought to do unto you at termes assigned, as God me help and all his Saints, and then he kissed the booke. But he shall not kneele when he maketh his fealty, nor shall make such humble reverence, as is aforesaid in Homage. And great diversity there is between making of Fealty, and of Homage: For Homage may not be made but to the Lord himselfe. But the Steward of the Lords Court, or the Bayliffe may take Fealty for the Lord.

Also, tenant for terme of life shall make fealty, and yet he shall make no homage. And diverse other diversities there be between Homage and Fealty

Also a man may see a good note. Anno 15 Ed. 3. where and how a man and his wife make homage

homage and fealty in the common banke. which is written in such forms. Note, that John Lewknor, and Elizabeth his wife made Homage unto William Thrope in this manner: The one and other held joyntly their hands between the hands of William Thrope, and the husband said in this wise: We unto you make homage, and beare you faith for the lands we hold of A. your counsor. which hath granted your services in B and in C. and the other to warrs, &c. against all men (saving the faith that we owe unto our Soveraigne Lord the King, and to his heires, and to our other Lords) and the one and the other kissed him. And after they made Fealty, and the one and the other held their hands together upon a book, and the husband said the words, and both kissed the book. More shall be said of fealty in the tenure of Socage, and in the tenure of Frankalmoign, and in the tenure of Homage ancestrell.

Escuage.

ESCuage is called in Latine Scutigium, that is to say, service of shield. And such a tenant that holdeth his Land by Escuage, holdeth by Knights service. And also it is commonly said, that some hold by a fee of Knights service, and some by the halfe fee of Knights service, &c. And it is said, that when the King maketh a voyage royall into Scotland for to subdue the Scots, hee that holdeth by a fee of Knights service, behoveth to be with K. by 40. dayes, well and comberably arrayed for the war. And like-

likewise he that holdeth his land by the halfe of a fee by Knights service, ought to be with the King by twenty dayes. And he that holdeth his Land by a fourth part of a fee by Knights service, him behoveth to be with the King by ten dayes and so after the quantity, he that hath more, to do more, and he that hath lesse to do lesse.

But it appeareth by the pleas & arguments made in a good plea upon a writ of Detinue of an Obligation, brought by one Henry Gray, Anno 7. H. 3. fol 29 that it needeth not to him that holdeth by Escuage to goe himselfe, if he will find an able person for the war convenably arrayed for the war to go with the King, and that seemeth good reason: for it may be that he that holdeth by such service is sick, in such wise that he may not go nor ride

And also an Abbot, or any other man of religion, or a woman sole that holdeth by such service, ought not in such case to go in proper person. And Mr William Herle that time chiefe Justice of the common Pleas said in the said Plea, that Escuage shall not be granted, but where the King himselfe goeth in proper person. And so it abode in judgement of the same plea, if these forty dayes shall be accounted from the day of the Muster of the Kings host made by the Commons and the Kings commandement: Or else from the day that the King first entreth into Scotland &c. therefore enquire of this matter.

And after such voyage into Scotland it is commonly said that by the authority of Parliament,

ment, the Escuage shall be set and put in certaine: that is to say a certaine sum of money how much every one that holdeth by a whole fee of Knights service, which was not in his own proper person, nor none other for him with the King, shall pay unto the Lord for whom hee holdeth his land by Escuage As put case that it was ordained by authority of Parliament, that every one that holdeth by a whole fee by Knights service, which was not with the King, shall pay to his Lord forty shillings That he that holdeth by the halfe of a fee by Knights service shall pay unto his Lord but twenty shillings, and so who more more, and who lesse lesse. And some tenants hold that if Escuage run by authority of Parliament to any sum of money, that they shall pay but the halfe of that sum and some but the fourth part of that sum. But because the Escuage that they shall pay is not certaine, for that it is at no certain what the Parliament will assesse the Escuage, they hold by Knights service But otherwise it is of Escuage certaine, of which shall be spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be understood by the common speech of Escuage not certaine which is Knights service: And such Escuage draweth unto him Homage, and Homage draweth unto him Fealty, for Fealty is incident to every manner of service, but to the tenant of the frankalmoigne as it shall be said hereafter in the tenure of frankalmoigne: So he that holdeth by Escuage holdeth by Homage, Fealty, and Escuage.

And it is to be understood, that when Escuage is so selled, by authority of Parliament the Lord to whom the Land is holden by Escuage, shall have the Escuage so selled by the Parliament, because it is understood by the law, that at the beginning such tenements were given by the Lords to hold by such services to defend their Lords as well as the King, and to set in quiet and rest their Lords against the King of Scots aforesaid. And for that such tenements came first of the Lords, it is reason that they have the Escuage of their tenants

And the Lords in such case may distraine for the Escuage so assessed or they may have the Kings writs, directed unto the Sheriffes of the Shire, to leavy such Escuage for them as it appeareth by the Register fol. 84.

But if such tenants that hold of the King by Escuage, which were not with the King in Scotland, the King himselfe shall have the Escuage.

Item in such case aforesaid, where the King maketh a voyage royall into Scotland and the Escuage is assessed by Parliament if the Lord distraine his tenant that holdeth of him by service of a whole Knights fee, for the Escuage so assessed, &c and the tenant pleadeth and will averr that he was with the King in Scotland &c. by forty dayes, and the Lord will aver the contrary it is said that it shall be tried by the certification of the Marshall of the Kings Host in writing under his seale, which shall be sent to the Justices.

Homage

Homage, Escuage, and Fealty.

TEnure by Homage, Escuage, and Fealty, is to hold by Knights service, and it draweth unto it ward. Marriage and Relefe: for when such a tenant dyeth, his heire male being within the age of 21. yeares the Lord shall have the land holden of him unto the age of the heire of 21. yeares, which is called full age. for that such an heire by the understanding of the Law, is not able to do Knights service before the age of 21. yeares

And also if such an heire be not married at the time of the death of his Ancestor, then the Lord shall have the ward and marriage of him. But if such a tenant die his heire female being of the age of fourteen years or more, then the Lord shall not have the ward neither of the land nor of the body, for that a woman of such age may have a husband able to doe Knights service. But if such an heire female be within the age of fourteene yeares and not married at the time of the death of her Ancestor, then the Lord shall have the ward of the Lands holden of him, till the age of such an heire female of 16. yeares: For that it is given by the statute of West. 1. cap. 12. that by two yeares next following the said twelve yeares, the Lord may tender a convenient marriage without disparaging of such an heire female. And if the Lord do not tender her such marriage within the said two yeares, then at the end of the said two yeares

yeares may enter, and put out the Lord. But if such an heire female bee married within the age of fourteene yeares to the life of the Ancestor, and the Ancestor dye, she being within the age of fourteene yeares, the Lord shall have but the ward of the Land, till an end of fourteene yeares of age of such an heire female: And then her husband and she may enter into the land and put out the Lord for this is out of the case of the Statute. Insomuch that the Lord cannot tender marriage to her that is married &c. For before the said Statute of West. 1. such issue female that was within age of fourteene yeares at the time of the death of her Ancestor, and after that she had accomplished the age of fourteene yeares without any tender of marriage to her by the Lord, such an heire female then might enter into the Land, and put out the Lord, as appeareth by the rehearsall, and by the words of the same Statute: so that the said Statute was made in such case all for the advantage of the Lord, as it seemeth. But yet that at all times it is understood by the words of the same Statute, that the Lord shall not have the second yeare after the fourteenth yeare, as is aforesaid.

And note well, that the full age of the male and female after the common speech is said the age of one and twenty. And the age of discretion is said the age of fourteen years: for a child at full age, which is wedded within such age to a woman, may agree to the marriage or disagree.

And if the Warden in Chivalry marry once his

his ward within the age of fourteene yeares, and after the age of fourteene yeares he disagreeth to the marriage: It is said by some folke that the child is not bounden by the Law to bee married another time by his Warden for that the Warden had once the marriage of him, and therefore he was out of his Ward, as concerning the ward of his body. And when he had once the marriage of him, and therefore was out of his ward, he shall have no more the marriage of him. In the same manner it is if the Warden marry him, and the wife dye the child being within age of fourteene years or one and twenty yeares. And that the child may disagree to such marriage when he commeth to the age of 14. yeares it is proved by the words of the statute of Merton cap. 6. that saith thus: De dominis qui maritaverint illos quos habent in custodia sua, villanis, & aliis, sicut burgensibus ubi disparagentur si tales homines fuerint infra 14. annos, & talis ætatis quod matrimonio consentire non possint, tunc si parentes illius, conquerant', dominus ille amittat custodium illam usq; ad ætatem hæredis. Et omne commodum quod inde receptem, fuerit convertatur in commodum hæredis infra ætatem existentis, secundum dispositionem parentum, propter dedecus ei impositum Si autem fuerit 14 annorum & ultra quod consentire poterit, & tali maritagio consenserit, nulla sequatur pœna. And so it is proved by the same statute that no disparagement shall be, but where that he that hath the ward marrieth him within the age of 14 years

Also, it hath been a question how these words

should

ſhould be underſtood: Si parentes conquerantur, &c. And it ſeemeth unto ſome, the conſidering the ſtatute of Magna charta cap. 6. that will'eth, that hæredes maritentur abſque diſparagatione, &c. upon which the ſaid Statute of Merton upon this point is grounded, as it ſeemeth, and in ſo much as it was never ſeen that any action was brought upon the ſtatute of Merton for ſuch diſparagtay againſt the Warden; and if an action may be taken upon ſuch matter, it ſhall be taken by common preſumption before this time, or at ſome time to be put in ure that theſe words ſhall be underſtood in ſuch manner, Si parentes conquerantur, i. S. parentes interſe lamantantur, which is as much to ſay, that if the Couſins of ſuch a child have cauſe to make lamentation and complaint amongſt them for the ſhame done to their Couſin ſo diſparaged which is in a manner a ſhame to them all, then may the next Couſin to whom the heritage may not deſcend enter, and put out the Warden in Chivalry. And if he will not, another couſin of the childs may do it, and he to take the iſſues and profits unto the uſe of the childe, and of that yeeld the child account when he commeth unto his full age. Or elſe the child within age may enter himſelfe, and put out the Warden, &c. Sed quære de hoc.

Alſo, there are many other kinds of diſparagings, which be not ſpecified in the ſame Statute. As if the heire that is in wards be married unto one that hath but one foot, or one hand, or elſe deformed, or lame or having an horrible diſeaſe, or elſe a great and continuall infirmity:

Or

Or if the heire male bee married to a woman past childe bearing, and many other causes of disparaging there be, but require for them, for it is a good matter to learne And of heires males that be within age of one and twenty yeares after the death of their Ancestors unmarried: In such case the Lord shall have the marriage of such an heire, and he ought to tender to him convenable marriage without disparaging within the same time of 21 yeares.

And it is to wit that the heire in such a case may chuse if he will be married or no But if the Lord which is called Warden in Chivalry, tender a convenable marriage to such an heire within the age of one and twenty yeares, without disparaging, and the heire refuse and marry not himselfe within the same age: Then the said Warden shall have the value of the marriage of such an heire. But if such an heire male, marry himselfe within the age of one and twenty yeeres, against the will of the Warden in Chivalry, then shall the Warden have double the value of the marriage, by force of the Statute of Merton aforesaid, as in the same Statute is more fully comprised.

And divers tenents hold of their Lords by Knights service, and yet they hold not by Escuage, nor to pay no Escuage, as they that hold their land by Castle-ward, that is to say, to keep a Tower of a Castle, or a Goal, or some other place by reasonable warning, when their Lords here tell that enemies will come, or be come into England. And in many other cases a man may hold by Knights service, and yet he holdeth

not

not by Escuage nor payeth no Escuage as shall be said in the tenure of grand Serjeanty. But in all cases where a man holdeth by Knights service such services draw to the Lord, ward and marriage.

And if a tenant that holdeth of his Lord by service of the whole Knights fee dye, his heir being of full age of one and twenty yeares his heire shall pay unto the Lord a C s. for a relief. And he that holdeth by the halfe fee shall pay L s.

Also, if a man hold his Land of the Lord by the service of two Knights Fees, then the heire at full age at the time of the death of his Ancestor, shall pay to his Lord ten pound for relefe.

Also, if there be a grandfather, mother, and son, and the mother dyeth living the father of the son, and after the grandfather which held his land by Knights service dyeth seised, and the land descendeth to the son of the mother, as heire to the Grandfather which is within age. In such case the Lord shall have the ward of the Land, but not the ward of the heire: for that none shall be in ward of his body living his father, because the father during his life shall have the marriage of his heire apparant, and not the Lord. Otherwise it is if the father be dead living the mother, where the land holden in Chivalry, descendeth to the son on the fathers side, &c.

Also, if a man be seised of land which is holden by Knights service, and maketh a feoffement in fee to his use, and dyeth seised of the use, his heire within age, and no Will by him declared.

red, the Lord shall have a Writ of Right, of the body and the land, like as if the tenant had dyed seised of the demeine. And if the heire be of full age at the death of his Ancestor, in such a case he shall pay relefe, like as if he had been seised of a demeine, and that is by the statute of Anno, 4. Hen. 7. cap. 17

Also there is a Warden in right in Chivalry, and a Warden in deed in Chivalry: Warden in right in Chivalry, is where the Lord because of his Lordship is seised of the ward of the Land, and the heire ut supra. Warden in deed in Chivalry, is where the Lord in such case after his seising granteth by deed or without deed, the ward of the land, or of the heire, or of both to another man, by force of which grant the grantee is in possession, then is the grantee called Warden in deed, &c.

Tenure in Socage.

TEnure in Socage, is where the tenant holdeth of his Lord the tenancy by certaine service for all manner of services, so that the service be not Knights service: As where a man holdeth his Land of his Lord by Fealty, and certaine rent for all manner of services: or else where a man holdeth his Land by Homage, Fealty, and certaine rent, for all manner of services, for Homage by it selfe maketh not Knights-service.

Also, a man may hold of his Lord only by Fealty and such tenure is Tenure in Socage, for every tenure that is not tenure in Chivalry, is

tenure

tenure in Socage. And it is said that the cause wherefore such tenure is said, and hath the name of tenure in Socage, is this: Quia hoc Socag. idem est quod servic' Socæ, Et hæc Soca Socæ. idem est quod Caruca's, one Soke, or one plough land.

And in old time before the limitation of time out of mind, great parts of the tenants that held of their Lords by Socage, ought to come with their Ploughs every of the said tenants by certaine dayes in the yeare, to eare and sow the Lords lands of his owne graines: But for that such works were done for the livelihood and sustenance of their Lords, they were acquitted against their Lord of all manner of services. And for this, that such service was done with their Ploughs such tenure was called Tenure in Socage. And after that such services were changed into divers other manner of services, by consent of the tenants, and by the desire of their Lords, that is to say into an yearely rent, &c. But yet the name of Socage abideth, and in divers places Tenants yet do such service with their Ploughs unto their Lord so that all manner of services that be not tenures in Knights service be called Tenures in Socage.

Also, if a man hold of his Lord by Escuage certaine, that is to say, in such forme, that when Escuage runneth and is assessed by the Parliament to a more sum, or to a lesse sum, that the Tenant shall pay to the Lord but halfe a marke or Escuage, and neither more nor lesse, to how great sum or little sum that the Escuage runneth, in this case because the Escuage is certaine before

before that any Escuage is assessed, &c. such tenure is tenure in Socage, and not Knights service. But where the sum that the tenant shall pay for Escuage, is not certaine, that is to say, where by way that the sum that the tenant shall pay for Escuage may be at one time more, and another lesse, after that it is assessed, &c. then such tenure is tenure by Knights service.

Also, if a man hold his Land for to pay certaine rent to his Lord for Castlegard, such tenure is tenure in Socage. But where the tenant himselfe ought by him, or by any other to make castleward, such is tenure by Knights service.

Also, in all cases where the tenant holdeth of his Lord, to pay to him any certaine rent, that rent is called Rent-service.

Also, in such tenures in Socage, if the tenant have issue and die, his issue being within the age of fourteen yeares, then the next friend of that heire to whom the heritege may not descend shall have the ward of the land, and of the heire unto the age of the heire of 14 yeares, and such warden is called warden in Socage. For if land descend to the heire by the Fathers side, then the mother, or some other nigh cosin of the mothers side shall have the ward. And if land descend to the heire by the mothers side, then the father or the next friend of the fathers side shall have the ward of such lands or tenements And when the heire commeth to the age of fourteene yeares complete, he may enter and put out his warden in Socage, and occupy the land himselfe if he will. And such warden in Socage shall take no issues or profits of such Lands or Tene-

ments to his own use, but only to the use and profit of the heire, and of that shall yeeld account when it pleaseth the heire, after that the heire hath accomplished the age of fourteen yeares. But such a warden upon such account shall have allowance of all his reasonable costs and expences of all things. And if such a warden marry the heire within age of fourteene yeeres, he shall make account to the heire, or to his executors of the value of the marriage, though he took nothing for the value of the marriage, for that it shall be counted his owne folly, that he would marry him without taking the value of the marriage, without he marry him to such marriage that is worth in value as much as the marriage of the heire, &c. Also if any other man that is not a nigh friend &c. occupy the lands and tenements the heire as warden in Socage he shall be compelled to yeeld account unto the heire, as well as his next friend. For it is no plea for him in a writ of account to say that he is not his nigh friend, &c. But he shall answer whether he occupieth the Lands or Tenements, as Warden in Socage, or not. But enquire if after that the heire hath accomplish the age of fourteene yeares, and the Warden in Socage continually occupieth the Land till the heire commeth to the full age of one and twenty yeares. If the heire at his full age shall have an action of account against the warden for the time that he hath occupied after the said fourteen yeares, as against his Warden in Socage, or against him as against his bayliffe.

Also if Warden in Chivalry make his executors,

cutors, and die, the Heire being within age, &c. The Executors shall have the Ward during the nonage. But if the Warden in Socage make executors and die, the heir being within the age of fourteen yeares, his executors shall not have the ward, but another nigh friend to whom the heritage may not descend, shall have the Ward. And the cause of diversity is, for that the Warden in Chivalry hath the ward to his proper use, and the Warden in Socage hath not the ward to his own use, but to the use of the Heir. And in such case, where the Warden in Socage dieth before any such account made by him the heire is of that without remedy, for that no writ of account lieth against the Executors, but onely for the King.

Also the Lord of whom the land is holden in Socage after the death of his Tenant shall have relefe in such forme. If the Tenant hold by Fealty, and certain Rent to pay yearly, &c. If the termes of payment be to pay by two termes of the yeare, or by four termes of the yeare, the Lord shall have of the Heires of his Tenant, as much as the rent amounteth that he should pay by the yeare. As if the Tenant held of the Lord by Fealty, and ten shillings of rent, payable at certaine termes of the year, then the Heir shall pay to the Lord ten shillings for relefe above ten shillings that he shall pay for the rent. Look more in the Statute of Anno 19. Hen.7.cap.15.

And in such case after the death of the tenant, such relefe is due to the Lord incontinent, of what age soever the heire be, for that such a Lord

may not have the ward of the body nor the Land of the heire. And the Lord in such case ought not to abide the payment of his relief, after the terme and dayes of payment of the rent, but he ought to have his relieke incontinent: And therefore he may incontinent distrain after the death of his tenant for the relieke.

In the same manner it is, where a tenant holdeth of his Lord by fealty and by a pound of Comin, or a pound of Pepper by the yeare, and the Tenant die, the Lord shall have for his relieke a pound of Comin, or a pound of Pepper.

In the same manner it is, where the tenant holdeth to pay by the yeare a certaine number of Capons, or Hens or a paire of Gloves, or certaine bushels of Wheat, and such other manner things But in some case the Lord ought to abide to distraine for his relieke till a certain time. As if the Tenant hold of his Lord for a Rose, or by a bushell of Roses to pay at the feast of S. John Baptist. If such a tenant dye in Winter, then the Lord may not distrain for his relief, &c. untill the time that the Roses by the course of the yeare may have their growings, &c. Et sic de similibus.

Also, if any peradventure will aske why a man may hold of his Lord by fealty onely for all manner of services, inlomuch that when the tenant shall make his fealty, he shall sweare to his Lord that hee shall doe all services due, and when he hath made fealty in such case, there is no other service due: To this it may bee said, that where the tenant holdeth his land of his Lord, it behoveth that he ought to doe to his

Lord

Lord some manner of service, for if the Tenant nor his heires ought to do no manner of service to his Lord, nor to his heire, then by long time continued it should bee out of remembrance of whom the land was holden of the Lord or of his heire or not, and then more oft and more sooner will men say, that the land is not holden of the Lord nor of his heires then otherwise: and upon this the Lord shall lose his Escheate of his land or percase other forfeiture or profit that hee might have of the land: So it is reason that the Lord and his heires have some service done unto him, for a proofe and a witnesse that the land is holden of them and because fealty is incident to all manner tenures, except tenure in Frankalmoigne, as shall be said in Frankalmoigne: and because that the Lord will not at the beginning of the tenure have any other services but fealty, it is reason that a man may hold of his Lord only by Fealty, and when he hath made his Fealty he hath done all his service.

Also, if a man let to another for terme of life certaine lands or tenements without speaking of any thing to yeeld to the Lessor. yet he shall do the Lessor Fealty, for that he holdeth of him. And if a Lease bee made to a man for terme of yeares, it is said the Lessee shall do to the Lessor Fealty, for that he holdeth of him. And this is proved well by the words in a writ of Waste, when the Lessor hath cause to bring a Writ of waste against him the which writ shall say, that the Lessee holdeth the Tenements of the Lessor for terme of yeares: so that writ proveth a tenure between them, &c But he y^t is tenant at will after

the course of the common Law, shall not make Fealty, because he hath no manner of a sure Estate. But otherwise it is of Tenant after the custome of the Mannor, because that he is bound to do Fealty to his Lord for two causes: One is because of custome; the other is because that he taketh his Estate in such forme to do Fealty.

Frankalmoigne.

TEnant in Frankalmoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Frankalmoigne: that is to say in Latine, in liberam Eleemolynam that is to say, in free Alms. And such tenure began first in old time when a man in old time was seised of lands or tenements in his demeine as of Fee, and of the same Land infeoffed an Abbot and his Covent, or Prior and his Covent, to have and to hold to them and their successors in pure and perpetual Almes, or in Frankalmoigne, or by such words, to hold of the Grantor, or of the Lessor and his Heires in free Almes: In such case the tenements were holden in Frankalmoigne. And in the same manner it is, where the Lands or Tenements were granted in old time to a Dean and Chapter, and to their successors, or to a Parson of a Church, and to his successors, or to any other man of holy Church, and to his successors in free almes if he had capacity to take such grants or feoffments, &c. And such as hold in free Almes, be bound of right afore God to do Oblations,

sons, Prayers, and Masses, and other divine services for the soules of the grantors or feoffors, or for the soules of their heires which be dead, and for the prosperity and good life of them that be alive.

And for this they do at no time no manner of Fealty unto their Lords, for that such divine service is better for them before God, then any doing of Fealty. And also these words Free almes, or Frankalmoigne, exclude the Lord to have any worldly, or temporall service, but only to have divine and spirituall service to be done for him, &c. And if such that hold their tenements in Free almes, or Frankalmoigne will not, or faile to do such divine service as is said, the Lord may not distrain them for the services undone, &c because it is not set in certain what service they ought to do: but the Lord may of them complaine to their Ordinary, praying him that he will set punishment and correction of that: And also to provide and see that such negligence be no more done: and the Ordinary of right ought to do that, &c.

But where an Abbot or a Prior holdeth of his Lord by certaine divine service in certaine to be done, as for to sing a Masse every Friday in the week, for the souls, &c. or every yeare at such a day to sing Placebo and Dirige, &c or to find a Chaplaine to sing Masse, &c. or to distribute in almes to a hundred poor men, an hundred pence at such a day: in such case, if such divine service be not done, the Lord may distraine, &c. for that this divine service is in certaine by their tenure what the Abbot or the Prior ought to do. And

in such case the Lord shall have Fealty, &c. as it seemeth.

And such tenure is not said tenure in Free almes, but it is said tenure by divine service, for in tenure in free almes, or Frankalmoigne, no mention is made of any manner certaine service, for none may hold in free almes or frankalmoign if there be expressed any manner service that hee ought to do.

And if it be demanded, if the Tenant in frankmarriage shall do Fealty to the Donor or to his heires before the fourth degree be passed, &c. It seemeth that yea, for it is not like as to this intent to a tenant in free almes or frankalmoigne, for the tenant in free almes shall doe (because of his tenure) divine service for the Lord, as it is aforesaid, and that he is charged to do by the Law of holy Church, and for that he is excused and discharged of Fealty But tenant in Frankmarriage doth not by his tenure such service.

And if he do not to his Lord Fealty then he doth not to his Lord any manner of service neither spirituall nor temporall. which should be an inconvenience and against reason, that a man should have estate of inheritance of another, and yet the Lord shall have no manner of service of him as it seemeth, and so it seemeth that he shall do Fealty to his Lord untill the fourth degree be past &c. And when he hath done Fealty, he hath done all his service. And if an Abbot hold of his Lord in free almes, and the Abbot and his Covent under their common seale alien the same land to a secular man in fee simple, in this

this case the secular man shall do fealty to the Lord, for that he may not hold of his Lord in free almes: For if the Lord ought not to hold of him Fealty, then he shall have of him no manner of service, which should bee an inconvenience, where he is Lord, and the tenements are holden of him.

Also, if a man grant at this day to an Abbot or to a Prior, Lands or Tenements in Free almes, or Frankalmoigne, these words Free almes, or Frankalmoigne be void, for that it is ordained by the Statute which is called, Quia emptores terrarum, which Statute was made Anno 18. Regis E primi, That no man may alien or grant Lands or Tenements in Fee simple to hold of himselfe, so that if a man be seised of certaine Lands or tenements which he holdeth of his Lord by Knights service and at this day hee granteth the same land to an Abbot, &c in free almes, or Frankalmoigne, the Abbot shall hold immediately the same tenements by Knights service of the Lord of his Grantor, because of the same Estatute: so that no man may hold in free almes, or in Frankalmoigne, but if it be by title of prescription, or by force of a grant made to some of his predecessors before the same Estatute: But the King may give Lands or Tenements in Fee simple to hold in free almes or Frankalmoigne, or by other service for he is out of the case of the Statute And note well, that no man may hold Lands or Tenements in Free almes, but of the grantor or his heires, and that for the nyhity of the gift: and therefore it is said, that if there be Lord, Mesne, and

Tenant

tenant, and the tenant is an Abbot that holdeth of his meſne in Frankalmoigne, if the Meſne die without heire, then the meſnalty ſhall come by Eſcheat to the ſaid Lord above, and the Abbot then ſhall hold of him immediately only by fealty, and ſhall do him fealty, for that he may not hold of him in Frankalmoigne &c.

And note well that where ſuch a man of religion holdeth his alms of his Lord in free alms, &c his Lord is bound by the Law to acquit him of every manner of ſervice that any Lord above him will demand or aske of the ſame tenants. And if he acquit him not, but ſuffer him to be diſtrained, &c. then he ſhall have againſt his Lord a Writt of Meſne, and recover his damages and coſts of his ſuit.

Homage Anceſtrel.

TEnure by Homage Anceſtrell is, where a tenant holdeth his land of his Lord by homage, and the ſame tenant and his Anceſtors whoſe heire he is, have held the ſame land of the ſaid Lord, and of his anceſtors whoſe heire the Lord is, from time out of mind, by homage, and have done homage unto him: which is called Homage anceſtrell, becauſe of the continuance which hath been by title of preſcription in the tenancy, in the blood of the tenant, and alſo in the Lordſhip in the blood of the Lord. And ſuch ſervice by homage anceſtrell draweth to it warranty: if the Lord that is alive hath received homage of ſuch a tenant, he ought to warrant his tenant when he is impleaded of the lands

holden

holden of him by homage Ancestrell And all such service by homage Ancestrell draweth to it acquittance that is to say the Lord ought to acquit his Tenant against all other Lords above him of every manner of service. And it is said, that if such Tenant be impleaded by a Præcipe quod reddat, &c. And he voucheth his Lord to warranty, which cometh in by processe, and asketh the Tenant what he hath to bind him to warranty, and he sheweth how he and his Ancestors whole heir he is, have holden the land of the Vouchee and of his Ancestors, whole Heir he is, by homage from time out of mind: if the Lord which is vouched received no homage of the Tenant, nor of any of his Ancestors, the Lord then, if he will, may disclaim in the Lordship, and so put out his Tenant of his warranty. But if the Lord which is vouched hath received homage of the Tenant, or of any of his Ancestors, then may he not disclaim, but he is bound by the Law to warrant the Tenant, and then if the tenant leese the land in default of the Vouchee he shall recover in value against the Vouchee of the Lands or Tenements that the Vouchee had at the time of the Voucher, or any time after.

And it is, to wit, that in every case where the Lord may disclaime in his Lordship by the Law, in Court of Record, and of that will disclaime, his seigniory is extinct, and the tenant shall hold of the Lord next above his Lord which so disclaimeth. But if an Abbot or Prior be vouched by force of Homage Ancestrell, &c. though he have never taken Homage, &c. yet he cannot disclaime

claime in this case, nor in none other case, for they cannot divest that thing in Fee, which hath been vested in their house. Pasche 10. E 4.

Also, if a man that holdeth his land by homage ancestrell alieneth his land to another in fee, the alienee shall do homage to his Lord: but he holdeth not of his Lord by Homage Ancestrell, for that the tenancy was not continued in the blood of his ancestors of the alienee, nor the alienee shall never have the warranty of his land of the Lord for that the continuance of the tenancy in the tenant, and in his blood by the alienation is discontinued. And so see that if the tenant that holdeth his Land by Homage ancestrell of the Lord, and such a tenant alieneth in fee, though that he take estate of the alienee again in fee, he holdeth the land by homage, but not by homage ancestrell.

Also, it is said that if a man hold his Land of his Lord by homage and fealty, and he hath made homage and fealty to his Lord and the Lord hath issue a son and dyeth, and the Lordship descendeth to his son: In this case the tenant which did homage to the father, shall not do homage to his son, for that when a tenant hath made once homage to his Lord, he is excused for terme of his life to make homage to another heir of the Lord: But he yet shall do fealty to the son and heir of his Lord, though that he made fealty to his father.

Also, if the Lord after the homage to him made by his Tenant, grant the service of his Tenant by deed unto another in Fee, and the Tenant attorneth, &c. the tenant shall not be compelled to

do

do homage, but he ſhall do fealty, though he did fealty before to the Grantor, for fealty is incident to every attournment, when the Lordſhip is granted. But if a man be ſeiſed of a mannor, and another man holdeth his land of him as of the mannor aforeſaid by homage, the which hath done homage to his Lord which is ſeiſed of the Mannor, if after that a ſtranger bring a Præcipe quod reddat againſt the Lord of the Mannor, and recovereth the Mannor againſt him, and ſueth execution, &c. in this caſe the tenant ſhall once againe do homage to him that recovereth the Mannor, for that the eſtate of him that received homage before is defeated by the recovery: And it ſhall not lie in the mouth of the tenant to falſifie or defeate the recovery which was againſt his Lord. And ſo ſee the diverſity in this caſe, where a man commeth to his Lordſhip by recovery, and where it commeth by deſcent, or grant of the Seignory.

And if a tenant which ought by his tenure to do homage to his Lord come to his Lord, and ſay to him, Sir, I owe to do unto you homage for the tenements that I hold of you, and I am ready to do you homage for the ſame tenements, for the which I pray you that you will now receive it, and if the Lord then refuſe to receive it, then after ſuch refuſall the Lord may not diſtrain the tenant for the homage before that the Lord require the tenant to do homage, and the tenant refuſe to do it.

Alſo, a man may hold his land by homage anceſtrell, and by Eſcuage or by other Knights ſervice as well as he might hold his land by homage anceſtrell in ſocage.

Grand

Grand Serjeanty.

TEnant by Grand Serjeanty is, when a man holdeth his Lands or Tenements of our Soveraigne Lord the King, by the service which he ought to do in his own proper person, as to bear the Kings Banner, or his Speare, or to lead his Host, or to be his Marshall, or to bear his Sword before him at his Coronation, or to be his Sewer at his Coronation, or his Carter, or Butler or to be one of his Chamberlaines of his receit of his Exchequer, or to do such services, &c. And the cause wherefore such service is called Grand Serjeanty is, for that it is more honourable, and worshipfull, and digne, than is the service of the tenure by Escuage, for he that holdeth by Escuage is not limited by his tenure to do any more especiall service, than any other that holdeth by Escuage ought to do. But he that holdeth by Grand Serjeanty, ought to do some especiall service to the King, that he that holdeth by Escuage ought not to do.

Also if the tenant that holdeth by Escuage die, his Heire being of full age if he held by a Knights fee, the Heir shall pay but an C s. for his reliefe, as it is ordained by the Statute of Magna Charta, cap. 2. But he that holdeth of the King by Grand Serjeanty, and dieth, his heir being of full age shall pay unto the King for his relief the value of his Lands or Tenements by the year, besides the charges and reprises which he holdeth of the King by Grand Serjeanty.

And

And it is to wit, that Serjeantia in Latine is ſervitium, and ſo Magna ſerjeantia, is Magnum ſervitium, that is to ſay a great ſervice.

Alſo thoſe which hold by Eſcuage ought to do their ſervice out of the Realm, but they that hold by Grand Serjeanty for the moſt part ought to do their ſervice within the Realm.

And it is ſaid, that in the marches of Scotland ſome hold of the King by Coynage, that is to ſay, to blow an horne for to warne the men of the Country, &c. when they heare that the Scots or other enemies will come to enter into England, &c. which ſervice is Grand Serjeanty, &c. But if any tenant hold of any other Lord then of the King by ſuch ſervice of Coynage, that is not Grand Serjeanty, but it is Knights ſervice and do with to it ward, marriage, and reliefe, for none may hold by Grand Serjeanty, but of the King only.

Alſo a man may ſee in the 11. yeare of Henry 4. fol 27. that Cokein then being chiefe Baron of the Exchequer came into the common Pleas, bringing with him a copy of Record in theſe words, Talis tenet tantam terram de domino Rege per Serjeantiam, ad inveniendum unum hominem ad guerram infra quatuor maria, &c. that is to ſay, Such a man holdeth ſo much land of our Soveraign Lord the King by Serjeanty to find one man appointed for the War within the foure ſeas, and he demanded whether it was Grand Serjeanty, or Petty Serjeanty: And Hank then ſaid, that it was Grand Serjeanty, for that it was ſervice to be done by the body of a man, and if that he may not find a man to do

ſervice

ſervice for him, he muſt do it himſelfe: to whom the other Juſtices aſſented. Cokein then ſaid, the tenant in this caſe ſhall pay reliefe to the value of the Land by yeare, to the which was no anſwer. And note that all they that hold of the King by Grand Serjeanty hold of the King by Knights ſervice, and the King of that ſhall have ward marriage, and reliefe, but the King ſhall not have of them Eſcuage, if they hold not by Eſcuage.

Petty Serjeanty.

TEnant by Petty Serjeanty is, where a man holdeth his Land of our Soveraigne Lord the King to yeeld unto him yearly a Bow, a Sword, a Dagger, or a Knife, or a Spear, or a paire Globes of maile, or a paire of Spurs gilt, or an Arrow or divers Arrows, or to yeeld ſuch other ſmall things touching the war, and ſuch ſervice is but Socage in effect, for that that the tenant by his tenure ought not to goe, nor to do any thing in his own proper perſon touching the war, but to yeeld and pay yearly certain things unto the King, as a man ought to pay a rent.

And note, that no man holdeth Land by Grand Serjeanty, nor by Petty Serjeanty but of the King.

Burgage.

TEnure in Burgage is, where an ancient Borrough is, of the which the King is Lord and they that have tenements within the Borrough

rough hold of the King their tenements, that e= very tenant for his tenement ought to pay to the King a certain rent by year, &c And such te= nure is but tenure in socage And the same man= ner is where any her Lord Spiritual or Tempo= ral is Lord of such a Burrough, & the Tenants of the Tenements in such a Bourrough hold of their Lord to pay each of them yearly an annu= al rent: and it is called tenure in Burgage for that the Tenements within the Burrough be holden of the Lord of the Bourrough by certains rent, &c. And it is, to wit that the ancient Towns called Bourroughs, be the most ancient and eldest Towns that be within England, for the Towns that now be Cities or Counties, in old time were Bourroughs, and called Bour= roughs, for of such old Townes, called Bur= roughs come the Burgesses of the Parliament, to the Parliament, when the King hath sum= moned his Parliament.

Also for the greater part, such Burroughs have divers customs and usages which be not had in other Towns; for some Burroughs have such a Custome, that if a man have issue many sons and dieth, the youngest son shall inherit all the Tenements which were his fathers within the same Burrough as heir unto his father, by force of the custome, the which is called Bur= rough English.

Also in some Burroughs by the custome the wife shall have for her dower all the tenements which were her husbands.

Also in some Burrough by the custome, a man may devise by his Testament his lands

and tenements which he hath in fee simple with in the same Burrough at the time of his death, and by force of such device, he to whom such device is made after the death of the deviser, may enter into the tenements to him devised, to have and to hold to him after the forme and effect of the device, without any livery of seisin thereof to be made to him.

Also, though a man may not grant nor give his tenements to his wife during the coverture, for that that his wife, and he be but one person in the Law, yet by such custome he may devise by his testament his tenements to his wife, to have and to hold to her in Fee simple, or in Fee taile, or for term of life, or years, for that such device taketh no effect, but after the death of the deviser And if a man at divers times make divers Testaments, and divers devises &c yet the last devise and will made by him, shall stand and abide.

Also by such custom a man may devise by his Testament, that his Executors may alien and sell the Tenements that he hath in Fee simple for a certain sum, to distribute for his almes: In this case though the devisor die seised of the Tenements, and the tenements descend unto his heire, yet the Executors after the death of the Testator may sell the Tenements so devised, and put out the heir, and thereof make a feoffment, alienation, and estate by Deed or without Deed, to them to whom the sale is made unto.

And so may you see a case, where a man may make a lawful estate, and yet he hath nought in the Tenements at the time of the estate made:

And

And the cauſe is for that, that the cuſtome and uſage is ſuch Quia conſuetudo ex certa cauſa rationabili uſitata, probat communem legem, For a cuſtome uſed upon a certain reaſonable cauſe, proveth the common law

And note well, no cuſtome is to be allowed, but ſuch cuſtome as hath been uſed by title of preſcription, that is to ſay, from time whereof is no mind But divers opinions have been of time out of mind, and of title of preſcription, which is all one in the Law; for ſome men have ſaid, that the time of minde ſhould be ſaid for time of limitation in a writ of right, that is to ſay, from the time of King Richard the firſt after the Conqueſt, as is given by the ſtatute of Weſtminſter the firſt, for that a writ of right is the moſt higheſt writ in his nature that may be. And in ſuch a writ a man may recover his right of the poſſeſſion of his Anceſters, of the moſt ancient time that any man may by any writ by the law And inſomuch that it is given by the ſaid Eſtatute, that in ſuch a writ none ſhall be heard to aske of the ſeiſin of his Anceſters of more longer time, then of the time of King Richard aforeſaid; therefore this is proved, that continuance of poſſeſſion, or other cuſtomes or uſages uſed after the ſame time is title of preſcription, and this is certaine. And others have ſaid, that well and truth it is, that ſeiſin and continuance after the limitation, &c. is a title of preſcription, as is aforeſaid, and by the cauſe aforeſaid. But they have ſaid that there is alſo another title of preſcription that was at the common Law, before any Eſtatute of limitation of Writs, &c. And

that it was where a Custome or usage, or other thing hath been used, for time whereof minde of man runneth not to the contrary: and they have said that this is proved by the pleading: where a man will plead a title of prescription of custom, &c he shall say that such custome hath been used from time whereof the memory of man runneth not to the contrary, that is as much to say when such a matter is pleaded that no man then alive hath heard any proofe to the contrary, nor hath no knowledge to the contrary. and insomuch that such title of prescription was at the Common law and not put out by the Estatute, Ergo it abideth as it was at the Common Law and the sooner, insomuch that the said limitation of a writ of right &c is of so long time passed. Ideo quære de hoc. And many other customes and usages, have such ancient Burroughs.

Also every Burrough is a town, but not the contrary. More shall be said of customes in the tenure.

Villeinage.

TEnure in villeinage is most properly when a Villeine holdeth of his Lord (to whom he is Villeine) certaine lands and tenements after the custome of the Mannor, or else at the will of his Lord and to do his Lord villeine service, as to beare, bring, and carry out the dung and filth of the Lord unto the land of the Lord, there to lay it, cast it, and spread it abroad upon the land, and to doe such other manner of service. And some

some free tenants hold their tenements after the custome of certaine Mannors by such service, and their tenure is called tenure in villeinage, and yet they be no villeines, for no Land holden by Villeinage, or villeine lands, or any custome arising of the Land, shall ever have a free man villeine But a villeine may make a free land to be villeine land unto his Lord As if a villeine purchase land in fee simple, or in fee taile, the Lord of the villeine may enter into the Land, and put out the villeine and his heires for ever, and after the Lord (if he will) may let the same land to the villeine, to hold in villeinage.

Also, if a feoffement be made to a certaine person or persons in fee to the use of a villeine or if a villeine with other persons be enfeoffed to the use of a villeine, what estate soever the villeine hath in the use, in fee taile, for terme of life, or yeares the Lord of the Villeine may enter in all those lands and tenements, likewise, as if the villeine had been alone seised of the demeine: and that is by the statute of Anno. 19 Hen 7. ca. 5. But if a free man will take any lands or tenements of his Lord by such Villeine service, that is to say, to pay a fine to his Lord for his marriage, or for the marriage of his son, or his daughter, then shall he pay such a fine for the marriage, &c for that it is the folly of such a free man to take in such forme Lands or Tenements to hold of his Lord by such bondage, yet that liketh not the free man villeine.

Also, every villeine, either he is villeine by prescription that is to say, he and his ancestors have been villeines time out of mind, or he is

villeine by his own confession in Court of Re
Lord. But if a free man have divers issues, an
after confesseth himselfe to be villeine to anothe
in Court of Record yet his issues which he ha
before the confession be free, but the issues whi
he shall have after the confession, &c. shall be vi
leines.

Also if a villeine purchase lands and alienet
the same lands to another before his Lord ente
then the Lord may not enter, for it shall be
judged his owne folly that he entred not whe
the land was in the Villeines hands. And so
ts of his other goods, for if the villeine buy an
sell or give goods to another before that the Lo
seise the goods then the Lord may not seise them
But if the Lord before any such sale or gi
commeth within the house of the villeine whe
such goods be, and there openly among the neigh
bours claim the same goods to be his and so seis
parcell of the same in name of seisin of all hi
goods, &c this is said a good seisin in the Law
And the occupation that the villeine hath aft
such claime in the goods, shall be taken in th
Law in the right of the Lord But if the Kin
have any villeine that purchaseth lands and di
neth before that the King enter, yet the Kin
may enter in the land, in whose hands soever th
land commeth: or if the villeine buy or sell divers
goods before that the King seise the goods, yet th
King may seise them in whose hands soever the
be, quia nullus tempum occurrit Regi, for no ti
runneth against the King.

Also, if a man let land to another for ter
of life, saving the reversion to him, and a ville
purch

purchaseth of the Lessor the reversion, in this case it seemeth that the Lord of the Villeine may incontinent come to the Land and claime the same reversion as Lord of the same Villeine, and by this claim, the reversion is incontinent in him, for in any other forme he may not come to the reversion, for he may not enter upon the tenant for terme of life: And if he ought to attend till after the death of the tenant for terme of life, then happily he might come too late, for peradventure the Villein will grant or alien to another in the life of the tenant for terme of life. In the same manner it is where a villeine purchaseth the Advowson of a Church full of an incumbent, that the Lord of the Villeine may come to the said Church to claim the Advowson, and by this claime the Advowson is in him: For if he abide till after the death of the incumbent, and then present his Clark to the said Church; then in the mean time the villeine might alien the Advowson, &c. and so put out the Lord from his presentation.

Also there is a villeine regardant, and a villeine in grosse. Villein regardant is, as if a man be seised of a Mannor, to which a villeine is regardant, and he that is seised of the said Mannor, or they whose estate he hath in the same Mannor have been seised of the said villein, and of his Ancestors as villeines regardant to the Mannor from time out of mind. And villeine in gross is where a man is seised of a Mannor, to the which a villeine is regardant, and granteth the same villeine by his deed unto another, then he is villeine in grosse, and not regardant.

Also if a man and his Ancestors whose Heir he is, have been seised of a Villeine and of his Ancestors, as villeines in grosse time out of mind, such be villeines in grosse. And note well that of such things which may not be granted nor alienes without Deed or Fine, a man that will have such things by prescription may not otherwise prescribe but in him, and his Ancestors whose heir he is, and not by these words in him and whose estate he hath for that that he may not have their estate without Deed or Writing, the which behoveth to be shewed to the Court, if he will have any advantage of this: and because that the grant and the alienation of a Villeine lieth not without Deed or other Writing, a man may not prescribe in a Villeine in grosse without shewing of Writing, but in himselfe that claimeth the villeine, and in his Ancestors whose heire he is. But of those things which be regardant or appendant to a Mannor, or to other Lands or Tenements, a man may prescribe that he and they whose estate he hath were seised of the Mannor or such Lands or Tenements, as regardants or appendants to the Mannor, or to such Lands or Tenements, &c. from time out of mind: and the cause is for this, that such a Mannor, Lands and Tenements, may passe by Alienation without deed, &c. And it is to wit, that nothing is named regardant to a Mannor but a Villeine. But certaine other things, as Advowsons and Common of pasture, &c. be named appendant to the Mannor, or to other Lands and Tenements.

Also if a man in Court of Record knowledge himselfe to be villein that never was villein before such a one is villeine in grosse.

Also a man that is villeine is called Villeine, and a woman that is villeine is called Meke. And a man that is outlawed is called an Outlaw. and a woman that is outlawed is called a Waife

Also if a villeine take a free woman to wife, the issue between them shall be villeine But if a Meke take a free man to husband, their issue shall be free And that is contrary to the Law Civil, for there is said, That partus sequitur ventrem.

Also no Bastard may be villeine, but if that he will acknowledge himselfe to be villeine in Court of Record, for he is in the Law, quasi nullius filius, as the son of no man.

Also every villeine is able and free to sue all manner of actions against every person, except against his Lord to whom he is villein: and yet in certain things he may have against his Lord an action, as of appeale for the death of his Father, or of his other Ancestors whose heire he is. Also a Meke which is retained by her Lord may have appeal of Rape against him.

Also if a Villeine be made Executor to another, and the Lord of the villeine was indebted to the Testator in a certaine sum of money, the which is not payed: In this case the villeine as Executor to the Testator, shall have an action of debt against his Lord, because he shall not recover the debt to his proper use, but to the use of the Testator.

Also

Also the Lord may not take out of the possession of such a villeine, that is executor, the deads goods, and if he do, the Villeine as Executor shall have an action of Trespass against his Lord for the same goods so taken, and recover damages to the use of the Testator But in all these cases it behoveth the Lord (which is defendant in such actions) to make protestation that the plaintiffe is his villein. or else the villein shall be infranchised, though the matter be found for the Lord against the Villeine, as it is said.

Also if a Villeine sue an action of Trespass, or other action against his Lord in one shire, and the Lord saith, that he shall not be answered, for that he is villeine regardant to his Mannor in another Shire, and the plaintiff saith that he is frank and of free estate, and no Villeine, this shall be tried in the Shire where the Plaintiff hath conceived his Action, and not in the Shire where the Mannor is, and this is in favour of liberty, and it is adjudged Mich 40 Edward the third. And for this cause was made a statute in the ninth year of Richard the second, the tenour of which ensueth in such form.

Also for that, where many Villeines and Niefes, as well of great Lords as of other folk Spiritual and Temporal, flee and go into Cities and places franchised, as the City of London, and other like places, and faine divers suits against their Lords, because they would make themselves to be enfranchised, it is accorded and assented that the Lords, nor none other shall be forebarred of their Villeins, because of their

their answer in the Law. By force of which statute, if any villeine will sue any manner of action to his owne use in any Shire where it is hard to try, &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to make protestation that he is his villeine, and to plead another matter in bar. and if they be at issue, and the issue be found for the Lord, then the villeine is villeine as he was before, by force of the same statute: But if the issue be found for the villeine, then is the villeine frank and free, for that the Lord took not for his plea, that the villeine was his villeine, but tooke it by protestation.

Also, the Lord may not maime his Villeine, for if he maime his Villeine, he shall of that bee indicted at the Kings suit And if he be of that attainted. he shall for that make grievous fine and ransome to the King. But it seemeth that the villeine shall not have by the Law any appeale of Maime against his Lord, for in appeale of Maime a man shall not recover but his damages And if the Villeine in that case recover damages against his Lord and hath thereof execution the Lord may take that that the villeine hath in execution from the villeine, and so the recovery standeth voyd.

Also, if the villeine be demandant in an action reall, or plaintife, in an action personall against his Lord, if the Lord will pleade in disability of his person, he may not make plaine defence, but he shall defend but the wrong and the force, and demand Judgement if he shall be answered, and shew his matter by and by how he

is Villeine, and demand Judgement if hee shall be answered.

Also, six manner of men there be against whom if they sue actions, &c. Judgement may be asked if they shall be answered: One is where the villeine sueth an Action &c. against his Lord, as in case aforesaid. The second is where a man is outlawed upon an action of debt or trespasse or upon any other action or indictment the Tenant, or the Defendant may shew all the matter of the Record and the outlawry and demand judgement if he shall be answered because that hee is out of the Law to sue an action during the time that he is outlawed. The third is where an alien borne out of the allegeance of our Soveraigne Lord the King, if such alien sue an Action reall or personall, the tenant or defendant may say, that he was borne out of the Kings allegeance, and aske judgement if hee shall bee answered. The fourth is, where a man by judgement given against him upon a writ of Præmunire facias, &c. is out of the Kings protection, if he sue any action and the tenant or defendant shew all the Record against him, he may aske judgement if he shall be answered, for the Law & the Kings writs be the things by which a man is protected and holden, and so during the time that a man in such case is out of the Kings protection, he is out of help and protection by the Kings Law, or by the Kings writ. The fifth is, where a man is entred and professed into Religion, if such a person sue an action, the tenant or defendant may shew that such a one is entred into Religion in such a place, into the Order of Saint Bennet,

and

and is there a Monke profeſſed, or in the Order of Friers, Minors, and Preachers and is there a Frier profeſſed and ſo of other Orders of Religion, &c and aske judgement if he ſhall be anſwered, and the cauſe is this, that when a man entreth into Religion, and is profeſſed, he is dead in the Law, and his ſon or next coſin incontinent ſhall inherit him, as well as though he were dead indeed, and when he entreth into Religion, he may make his Teſtament, and his executors, and they may have an action of debt due to him before his entry into Religion, or any other action that executors may have, if he were dead indeed. And if he make no executors when he entreth into Religion, then the Ordinary, may commit the Adminiſtration of his goods to the other, as if he were dead indeed. the firſt is, where a man is accurſed by the law of holy Church, and it ſueth his action reall, or perſonall. the tenant or defendant may plead that he that ſueth is accurſed, and of this it behooveth him to ſhew the Biſhops Letters under his ſeale witneſſing the accurſing, and aske judgement if he ſhall be anſwered &c but in this caſe if the demandant or plaintife cannot deny it, the writ ſhall not abate but the judgement ſhall be, that the tenant or defendant ſhall go quite without day, for this, that when the demandant for or plaintife purchaſed his letters of abſolution, and ſheweth them to the Court, he may have a reſummons or a reattachment upon his originall after the nature of his writ, &c But in the other caſes the writ ſhall abate, &c. if the matter ſhewed may not be gainſaid.

Alſo

Also, if a villeine be made a secular Priest, yet his Lord may seise him as his villeine, and seise his goods, &c. But it seemeth, that if the villein enter into religion, and is professed, &c. that the Lord may not take him, or seise him, for that hee is dead in the law. And no more then if a Free man take a Niefe to his wife, the Lord may not take nor seise the wife of the husband: But his remedy is to have an action against the husband, for that he took his Neife to wife without his will, and so may the Lord have an action against the Soveraigne of the house that taketh and admitteth his villeine to be professed in the same house without licence and will of his Lord, &c. and shall recover his damages to the value of the villeine: for he that is professed Monke &c. shall be a Monke, and as a Monke shall be taken for terme of his life natural except he be deraigned by the Law of the holy Church, and he is holden by his religion to keep his cloyster, and if the Lord may take him out of the house then he should not live as a dead person, or alter his Religion which should be inconvenient, &c. For if there be warden in Chivalry of body and lands of a childe within age if the child when he comes to the age of fourteen years enter into Religion and is professed the warden hath none other remedy, as to the ward of the body but a writ of ravishment of ward against the Soveraign of the house. And if any being of full age, that is cosin and heir unto the child, enter into the land, the warden hath no remedy as to the ward of the land, because that the entry of the heire of the child is lawfull in such case.

Also,

Also in many other cases the Lord may make Manumission, and infranchising to his villeine. Manumission is properly when the Lord maketh his Deed to his villein to infranchise him by this word Manumittere, which is as much as say, as extra manum & extra potestatem alterius ponere, as to put him out of the hands and the power of another. And for this that by such a Deed the villein is put out of the hands and the power of his Lord it is called Manumission. And so every manner of infranchising made to a villeine, may be said a Manumission. Also if the Lord make to the villeine an Obligation for a certaine sum of money or grant unto him by his Deed an annuity, or let him by his Deed lands or tenements for term of years, the villein is enfranchised. And if the Lord make a Feoffment to his villein of any lands or tenements by Deed, or without Deed, in Fee simple, or Fee taile, or for term of years, and delivereth unto him the seisin, this is an enfranchising: But if the Lord make to him a Lease of lands and tenements to hold at the will of the Lord, by deed or without deed, this is no enfranchising, for that he hath no manner of certainty or surety of his estate, but that the Lord may put him out when he will. Also if a Lord sue against his villein a Præcipe quod reddat, if he recover, or be nonsuit after appearance, this is Manumission, for it is that he may lawfully enter into the land without such suit. In the same manner it is if he sue against his villein an action of Debt or of Account, or of Covenant, or of Trespass, or such other, this is an infranchising, &c. For this that he may imprison

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his Villeine, and take his goods without such suit. But if the Lord sue his Villein by Appeale of Felony, this is no infranchising to the villeine, though the matter of the appeal is found against his Lord, because that the Lord may not have the Villeine hanged without such suit But of the Villein were not indicted of the same felony before the appeal sued against him, and is acquitted of the felony, so that he recover damages against the Lord for the false appeale: then in this case the villeine is infranchised, because of the judgement of damages that was given to him against his Lord. And more cases and matters there be by the which a villeine may be enfranchised against his Lord, Sed de illis quære Also if a Lord of a Mannor will prescribe that it hath been accustomed within his Mannor time out of mind, That every tenant within the same Mannor that marrieth his Daughter to any man without licence of the Lord of the Mannor, shall make fine to the Lord for the time being, this prescription is void, for none ought to make such fines but only villeines, for every free man may freely marry his daughter to whom it pleaseth him and his daughter. And because that this prescription is against reason, such prescription is void; but in the shire of Kent of lands holden in Gavelkind, whereby the custome used time out of mind, the children males ought evenly to inherit, this custome is allowable, for this, that it is with some reason, because that every son is as great a Gentleman as the elder son, and because of that, more great honour and valour shall grow, than if he had nothing

here by his Ancestors, where peradventure he might not so grow, &c.

Also, where by the custome called Burrough English in some Burroughs the youngest Son shall inherit all the tenements, &c. this custome also standeth with reason, because that the youngest son if he lack father or mother, because of his young age may least of all his brethren help himself, &c. But if a man will prescribe, that if any cattell were upon the demesnes of the Manner there doing damage, that the Lord of the Manner for the time being hath used to distrains them, and the distress to retaine till fine were made to him for the damages at his will, this prescription is void, because it is against reason, that if wrong be done any man, that he thereof should be his own Judge, for by such way if he had damages but to the value of an halfe penny, he might assesse and have therefore an C. l. which should be against all reason. And is such prescription, or any other prescription used, if it be against all reason this ought not, nor will not be allowed before Justices, Quia malus usus abolendus est.

Rents.

THree manner of Rents there be, that is to say, Rent service, Rent charge, and Rent seck. Rent service is, where a man holdeth his land of his Lord by fealty, and certain rent, or by other service, and certain rent, or by homage, fealty, and certain rent, and if rent service at any day that it ought to be payed, be behind,

the Lord may distraine for that of common right. And if a man now will give lands or tenements to another in the taile, yeelding to him certaine rent by the yeare he of common right may distraine for the rent behind, though that such gift was made without deed, because that such rent is rent service: But in such case where a man upon such a gift or lease, will reserve to him rent service, it behooveth that the reversion of the lands and tenements be in the donor, or in the lessor: for if a man will make a feoffement in fee, or will give lands in the taile, the remainder over in fee simple without a deed, reserving to him certaine rent such reserving is void because that no reversion is in the Donor, and such a tenant holdeth his land immediately of the Lord of whom his Donor held. And this is by force of the statute of West. the 3. cap. 1. Quia emptores terrarum. For before the same statute, if one made a feoffement in fee simple by deed, or without deed, yeelding to him or to his heires certaine rent, this was rent service, and for this he might distraine of common right: And if he made no reservation of any rent, nor of any service, yet the feoffee held of the feoffor by such service, as the feoffor held over of his Lord next above. But if a man by deed indented at this day, make such a gift in the taile, the remainder over in fee, &c. or feoffement in fee, and by the same indenture reserveth to him and to his heires a certaine rent, and that if the rent be behind, that it shall be lawfull to him and to his heires to distraine, &c. such rent is rent charge, because such lands and tenements be charged of such distresse by force of

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the writing only, and not of common right. And if such a man in such a deed indented, reserve to him and to his heires certaine rent, without any such clause set or put in the deed, that he may distraine, &c. that such rent is rent seeke, because that he cannot distraine to have the rent, if it be denyed by the same distresse, and if he were never seised in this case of the rent, he is without remedy, as it shall be said hereafter.

Also, if a man seised of certaine land grant by his deed Poll or by indenture, a yearly rent, issuing out of the same land to another in fee simple, in fee taile, or for terme of life, &c. with clause of distresse, &c. then that is rent charge, and if it be without clause of distresse, then it is rent seek. And note well that rent seek, idem est quod redditus siccus, because that no distresse is incident to it.

Also, if a man grant by his deed rent charge to another, and the rent is behind, the grantee may chuse if he will sue a writ of annuity of it against the grantor, or distraine for the rent behind, and the distresse to withhold till he be of that paid: But he may not do and have both together, for if he take a writ of annuity, then the land is discharged and if he sue not a writ of annuity but distraine for the arrerages, and the tenant sue a Replegiare, &c. and the grantee adoweth the taking of the distresse in the Land, &c. in Court of Record, then is the land charged, and the person of the grantor discharged of an action of annuity.

Also, if a man will that another shall have a rent charge issuing out of his lands, but he will

not that his person shall be charged in any manner by a writ of Annuity then he may have such clause in the end of the deed, Proviso semper quod præsens scriptum, nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breve de Annuali redditu; Sed tantummodo ad onerandum terra & tenementa prædicta, de Annuali redditu prædict' and then is the land charged, and the person of the grantor discharged.

Also, if a man make such a deed in such manner, that if A of B. be not yearely paid at the Feast of Christmas for terme of life, twenty shillings of lawfull money, that then it shall be lawfull to the said A. of B. to distraine for it in the Manner of &c. this is a good rent charge because that the Manner is charged of the rent by way of distresse, and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he granted not by his deed any annuity to the said A. of B but granted onely that he may distraine for his annuity.

Also, if a man have a rent charge to him and to his heires, issuing out of certaine Land, if he purchase any parcell of the land to him and to his heires, all the rent is extinct and annulled, because that rent charge may not in such manner be apportioned: but if a man that hath rent service purchase parcell of the land whereof the rent is, this shall not extinct all, but for the portion, for that rent service in such case may bee apportioned, and shall be apportioned after the value of the Land: but if a tenant hold his land by service to

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yeeld to his Lord yearely at such a feast an horse or an hawke, or such thing semblable if in such case the Lord purchase parcell of the land the service is gone because that such service may not be severed nor apportioned. But if a man hold his land of another by homage, fealty, and escuage, and by certaine rent, if Lord purchase parcell of the Land, &c. in that the rent shall be apportioned, as is aforesaid: but yet in this case the homage & fealty, abideth whole to the Lord, for the Lord shall have the homage and fealty of his tenant for the remnant of lands and tenements holden of him as he had before, &c for this, that such services be not annuall services, and may not be apportioned. But the escuage may and shal be apportioned after the quantity and rate of the land.

Also if a man have a rent charge, and his father purchaseth parcell of the tenements charged in the fee and dyeth seised that parcell descendeth to his son that hath the rent charge. now this rent charge shall bee apportioned after the value of the land, as is aforesaid of rent service, because that such portion of the Land purchased by the father, cometh not to the son by his own deed, but by descent and course of the Law.

Also, if there be Lord and fealty, and the tenant holdeth of his Lord by fealty and certaine rent, and the Lord granteth the rent by his deed to another, &c. reserving to him the fealty, and the tenant attourneth to the grantee of the rent, now such rent is rent secke to the grantee for this that the tenements bee not holden of the grantee of the rent, but be holden of the Lord that

reserved to his fealty. And in the same manner it is where a man holdeth his land by homage, fealty, and certaine rent. If the Lord grant the rent, saving to him the homage, such rent after such grant is rent seeke. But where Lands or Tenements be holden by homage, fealty, and certaine rent, if the Lord will grant the homage of his land by his deed to another, saving to him the remnant of the services, and the tenant attourneth to him after the forme of the grant, now in this case the tenant holdeth his land of the grantee: and the Lord that granteth the homage shall not have but the rent as rent seek and shall never distrain for the rent: for this, that neither homage, nor fealty, nor escuage, may be said seek, for he that hath, or ought to have of his tenant homage, or fealty, or escuage, may of common right distrain; for if it be behind, for homage, fealty, and escuage, be services by which lands and tenements be holden, and be such, that in no manner may be taken but as services. But otherwise it is of rent that was once rent service, for this that when it is severed &c. By the grant of the Lord from other services, it may not be said rent service for this that it hath not to it fealty which is incident to every manner of rent service and for this it is said rent seeke.

Also if a man let land to another for terme of life reserving to him certaine rent, if he grant the rent to another, saving to him the reversion of the land for terme by his deed, &c. such rent is but rent seek, for why? that the grantee hath nothing in the reversion of the land. But if he grant the reversion of the Land to another for terme of life, and

and the tenant attourneth &c. then hath the grantee the rent as rent service because he hath the reversion for terme of life And it is to be understood, that if a man give Lands or Tenements in the taile, reserving to him and to his heires certaine land, and let land for terme of life, reserving certain rent, if he grant the reversion to another and the tenant attourneth all the rent and service passeth by the word of the grant of reversion, for this that all the rent and service in such case be incidents to the reversion, and passe by the grant of reversion. But though he grant the rent to another, the reversion passeth not by such grant &c. And so note well the diversity And so it is holden Paschæ 12.E.4.f 3 But it is adjudged An 26.Lib.Ass pl.38,39. whereas the services of the tenant in the taile were granted, that was a good grant, yet notwithstanding the reversion remaines.

Also, if there be Lord, Meine, and Tenant, and the Tenant holdeth of the Meine by the rent of five shillings, and the Meine holdeth over by twelve pence, if the Lord above purchase the tenancy in fee, then the service of the Meinalty is extinct for this, that when the Lord above hath the tenancy he holdeth of the Lord next above him. And if he ought to hold it of him that was Meine, then he should hold one selfe tenancy immediately of divers Lords, which should be inconvenient and the Law will sooner suffer a mischiefe then an inconvenience, and for this the seigniory of the Meinalty is extinct But insomuch that the tenant held of the Meine by five shillings, and the Meine held but by twelve

pence, ſo that he had more advantage by foure ſhillings than he payed to his Lord, he ſhall have the ſaid foure ſhillings as rent ſeck yearly of the Lord that purchaſed the tenancy

Alſo if a man have rent ſeck, is once ſeiſed of any parcell of the rent, and after if the Tenant will not pay the rent that is behind, this is his remedy: It behoveth him to goe by himſelfe, or by another, to the lands and tenements, whereof the rent is iſſuing, and there to demand the arrearages of the rent And if the Tenant deny to pay it, this denying is a diſſeiſin of the rent. Alſo, if the tenant at the time be not ready to pay it, this is a denying and a diſſeiſin Alſo if the tenant nor none other be dwelling upon the lands or tenements when he asketh the arrearages, it this is a denying in Law, and a diſſeiſin indeed. And of ſuch diſſeiſins he may have an action of Novel diſſeiſin againſt the tenant, and recover the ſeiſin of the rent, and the arrearages and his damages and coſts of his Writ and of his Plea &c. And if after ſuch recovery the rent be another time denied him, then he ſhall have a R diſſeiſin, and recover double damages

And it is to be had in mind, that this name Aſſiſe is Equivocum, for ſometim' it is taken for a Jury, for in the beginning of the record of Aſſiſe of Novel diſſeiſin, the record ſhall begin thus, (Aſſiſa venit recogn') which is to ſay, that Juratores venit recogn', and the cauſe is for this, that by the Writ of Aſſiſe is commanded to the Sheriff, Quod facit xii. liberos & legales homines de vicinero, &c. videre tenentum illud, & nouina eorũ imbreviare, & quod ſummonũ, eos per

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bonos summon' quod sint coram Justiciariis, &c. parat' inde facere recognitionem, &c. And for this, that by force of such an original Writ a Panel by force of the same Writ ought to be returned &c. It is said in the beginning of the Record in Assise, Assisa venit recogn' &c. Also in Writ of Right it is commonly said, that the tenant may put him in God, and in the great Assise &c. Also there is a Writ in the Register called De magna Assisa elegenda: so is this a good proofe that this name Assise is sometime put for the Jury and sometime it is taken for all the Writ of Assise, and after that intent it is most properly and most commonly taken, as Assise of Novel disseisin is taken for all the Writ of Assise of Novel disseisin: In the same manner Assise of common of pasture, is taken for all the Writ of Assise of common of pasture and Assise of Mortdauncester, and Assise of Darreine presentment, &c. But it seemeth that the cause why such Writs at the beginning were called Assises, is for this, that by every such writ it is commanded to the Sheriff that he summon twelve, &c. which is as much to say, that he ought to summon a Jury, &c. and sometime Assise is taken for an Ordinance, for to set certain things in a certain rule and disposition, as an Ordinance that is entred in the ancient estatutes is called, Assisa panis & servitiæ.

Also if there be Lord and Tenant, and the Lord granteth the Rent of his Tenant by Deed to another, saving to him the other services, and the tenant attourneth, that is the rent seek, as it is afore said: But if the rents be denied him at the

next day of payment, he hath no remedy for this, that he had not thereof any possession: But if the tenant when he attourneth to the grantee, or after will give a penny, or a halfe penny to the grantee in name of seisin of rent, then if after at the next day of payment the rent be denied him, he shall have an assise of Novel disseisin. And so it is if a man grant by his deed a yearely rent issuing out of his land to another, &c if the grantor then after pay to the grantee a penny or an halfe penny in the name of the seisin for the rent, then if after the first day of payment the rent be denied, the grantee may have an assise, or else not.

Also of rent seck a man may have and Assise of Mordaunceſter, or a writ of Aiel, or Cosinage, and all other manner of actions reals as the case lyeth as he may have of any other rent.

Also there be three causes of disseisin of rent service, that is to say Rescous, Replevin and Enclosure. Rescous is, when the Lord distraineth in the land holden of him for his rent behind, if the distresse be rescued from him, or the Lord come upon the land, and would distraine, and the tenant or another man will not suffer him &c. Replevin is, when the Lord hath distrained the Replevin is made of the distresse, by writ or by plaint, &c. Enclosure is, if the lands and tenements be so enclosed that the Lord may not come within the lands and tenements for to distraine. And the cause why such things so done be disseisins made to the Lord, is for this, that by such things the Lord is disturbed of the meane by which he ought to have come to his rent. And

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foure causes be of disseisin of rent charge: that is to say Rescous, Replevin, Inclosure and Denier, for denying is a disseisin of rent charge as it is aforesaid of rent seeke And two causes be of disseisin of rent seek: that is to say, Inclosure and Denier. And yet it seemeth that there is another cause of disseisin of all the three rents aforesaid, that is, when the Lord is going to the land holden of him for to distraine for the rent being behind the tenant hearing this, encountred him, and forestalleth him the way with force and armes and menaceth him in such forme, that he dare not come to the land to distraine for his rent behind, &c. for doubt of death or bodily hurt this is a disseisin for this, that the Lord is disturbed of the meane whereby he ought to come to his rent. And so it is if by such forestalling and menacing he that hath rent charge, or rent seeke is forestalled, or dare not come to the land to aske the rent behind.

Thus endeth the second Book.

Parceners

Parceners.

PArceners be in two manners: that is to say, Parceners after the course of the Common Law, and Parceners after the Custome. Parceners after the course of the Common Law, be where a man or woman is seised of certain lands or tenements in fee-simple or fee taile, and hath no issue but daughters and dyeth, and the tenements descended to the daughters, and the daughters enter into the lands & tenements so to them descended, then they be called parceners, and be but one heire to their Ancestor, and they be called Parceners, for this, that by the writ that is called Breve de participatione faciendâ, the law will constrain them that Participation shall be made among them, and if there be two daughters to whom the land descendeth, then they be called two parceners, and if they be three daughters, they be called three parceners, and foure daughters foure parceners and so forth. And if a man seised of lands in fee simple or fee taile die without issue of his body, and the tenements descend to his sisters, they be parceners as is aforesaid. In the same manner it is, where he hath no sisters,

ſiſters, but the land deſcendeth to his Aunts, they be parteners. But if a man hath but one daughter, ſhee may not be ſaid parcener, but daughter and heire. And it is to wit, that partition betweene parceners may be made in diuers manners: One is, when they agree to make partition, and make partition of the tenements, as if there be two parceners, to diuide betweene them the tenements in two parts, euery part by himſelfe in ſeuerality of euery beine, and if there bee three parceners, to diuide the tenements in three parts in ſeuerality. Another partition there is to chuſe by agreement betweene them, certaine of their friends to make the partition betweene them of the Lands and Tenements in the forme aforeſaid And in ſuch caſes after ſuch partitions the eldeſt daughter ſhall chuſe firſt one of the parts ſo diuided, which ſhee will haue for her part. And then the ſecond daughter after her another part &c. if it ſo be that there be many ſiſters: if it be not that they be otherwiſe agreed betweene them, for it may be agreed betweene them, that one of them ſhall haue ſuch Tenements, and another ſuch Tenements, &c. without any ſuch firſt Election, and the part that the elder ſiſter hath, is called in Latine, Initia pars. But if the Parceners agree that the elder ſiſter ſhall make partition of the tenements in the forme aforeſaid, and if ſhe doe then it is ſaid that the elder ſiſter ſhall chuſe the laſt part after each of her other ſiſters. Another partition and allotting there is, as if there be foure Parceners, and after ſuch partition made of the Lands, euery part of the land is by it ſelfe

written

written in a little scrowle, and it is covered all in waxe, in manner of a little ball, so that no man may see the scrowle, then are the four balls of waxe put in a Bonnet to keep in the hands of an indifferent man, and then the elder daughter first shall put her hand in the Bonnet, which shall take a ball of waxe, and the scrowle within the same ball for her purpart. And then the second sister shall put her hand in the Bonnet, and shall take another. And so then the third sister the third ball. &c. And in this case it behooveth each of them to hold them to their chance, and allotment.

Also, another partition there is, as if there be foure Parceners, and they will not agree that partition shall be made between them, then one of them may have a writ de participatione faciendâ against the other three sisters, or two may have a writ of Participatione facienda against the other, or they three against the foure at their election, and when judgement shall be given upon such a writ, the judgement shall be such that partition shall be made between the parties, and the Sheriffe in his proper person shall go to the lands, and tenements &c. and there by the oath of twelve true men of his Bayliwick, &c. shall make partition between the parties, the one part of the same lands shall be assigned to the plaintife, or to one of the plaintifes, and another part to another, &c. not making mention in the judgment of the eldest sister more then of the youngest, and of the partition that he hath thus done, he shall make notice to the Justices, &c. under his seale, and the seals of twelve, &c. And so in this

case may you see, that the elder sister shall not have the first election. &c. But the Sheriff shall assigne the part that she shall have, &c and it may be that the Sheriff will assigne the first part to the younger sister, and the last part to the elder

And note well, partition by agreement betweene Parceners may by the Law be made among them, as well by word without deed, as by deed.

Also, if two meases descend to two Parceners and the one mease is worth by year twenty shillings, and the other but ten shillings by year, in this case partition may be made betweene them in such forme, that the one parcener shall have the one mease, and the other parcener shall have the other mease, and she that shall have the mease of twenty shillings, and her heires shall pay a yearly rent of five shillings issuing out of the same mease to the other Parcener and to her heires for ever, because that every of them shall have even in value, and such partition made is good enough, and the same Parcener that shall have the rent of five shillings, and her heirs may distraine for the rent of common right in the same mease of the value of twenty shillings, if the rent of five shillings be behind at any time, in whose hands soever the same mease commeth, though there were never writing made of it betweene them. In the same manner it is of partition of all manner of lands and tenements &c. where such rent is reserved to one, or to divers parceners upon such partition, &c but such rent is not rent service, but rent charge, of common

right

right had excluded for equality of the partition. And note well that none be called Parceners by the Common Law, but Women or their heirs of Women, and which come by Lands and Tenements by descent, for if Sisters purchase Lands or Tenements of this they be called joyntenants and not Parceners. Also if two Parceners of Land in fee simple make partition between them, &c. And the part of the one hath much more than the part of the other, if they were at the time of partition of full age that is to say, of one and twenty years, then they always shall abide and never be defeated: But if the Tenements whereof partition is made, be to them in fee taile, and the part that the one hath is much better in yearly value than the part of the other, howbeit that they be excluded during their lives to defeat the partition, yet if the parcener that hath the lesser part in value hath issue and dieth, the issue may disagree to the partition and enter, and occupy in common that other part which is allotted to her Aunt and so the Aunt may enter and occupy in common the other part allotted to her Sister, as if no partition thereof had been made &c.

Also if two Parceners of Tenements in fee take husbands, and they and their husbands make partition between them, if the part of the one be less in yearly value than the part of the other, during the lives of the Husbands the partition shall be in his force and strength: yet after the death of the Husband the Wife that hath the less part may enter in her Sisters part as it is aforesaid, and defeat the partition. But if the

partition

partition so made betweene theem were such, that every part at the time of allotment were egall of yearely value, then it may after be defeated in such cases.

Also, if there be two parceners and the younger of them be within the age of one and twenty years, and partition is made betweene them, so that the part that is allotted to the younger, is lesse in value then the part of the other: In this case the younger during the time of her nonage, and also when she commeth to full age of one and twenty yeares, may enter in the portion to her sister allotted, &c. and defeat the partition: But such a parcener ought to take heed when she commeth to full age, that she ne take to her owne use all the profits of the tenements to her allotted, for by that she agreeth to the partition at such age, in which case the partition shall stand and abide in his force and strength, &c. but peradventure the profits of the halfe shee may take leaving the profits of the other halfe to her sister, &c. It is to wit, that when it is said males and females be of full age, that shall bee understood of the age of one and twenty yeares: for if any feoffement or grant, release, confirmation, obligation, or any other writing before any such age be made of any of them, &c. or that any within such age bee Bayliffe or Receiver with any man, &c. all serveth for nought, and may be avoyded. Also, a man before such age shall not be sworne in no Jury, nor no inquisition.

Also, if tenements bee given to a man in the taile, which hath as much land in Fee simple,

and hath issue two daughters and dyeth, and the daughters make partition between them, so that the lands in fee simple bee allotted to the younger daughter, in allowance of the Tenements tayled, allotted to the elder daughter, if after such partition, the younger daughter alieneth the land in fee simple to another in Fee, and hath issue a son or a daughter and dyeth, the issue may enter in the tenements tailed, and them hold in purparty with their Aunt, and this is for two causes: One is for that that the issue may have no remedy of the Land alienated by the mother, for that the land was to her in fee-simple, and inasmuch as he is one of the heires in the taile, and hath nothing recompenced of that that to him belongeth of the tenements tailed, it is reason that he have his purparty of the land in taile, and namely when such partition maketh no discontinuance of the taile, as shall be said hereafter in the chapter of discontinuance But the contrary is holden M.20.H.6.fol.13. that is to say, that he may not enter upon the parcener that hath the land tailed, but is put to his suit by writ of Formedon. Another cause is, for that it shall be counted the folly of the elder sister, that she would agree to the partition, where she might have had halfe the land in fee simple, and halfe the tenements in the taile for purparty, and so to be sure without damage, &c.

Also. if a man seised of a plough land by just title, diseised an infant within age of another plough land, and hath issue two daughters, and dyeth seised of both those plough lands, the infant then being within age, and the daughters

enter

enter and make partition, and the one plough land is allotted for the purparty of the one, as percase to the younger sister in allowance of the other plough land which is allotted to the purparty of the other, so that after the infant entreth in the plough land of the which he was disseised, upon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough lands that her sister hath, and holdeth in parcenary with her: But if the younger sister alien in the same plough land to another in fee simple before the entry of the Infant, and after the child entreth upon the possession of the alienee, then she may not enter into the other plough land, for this, that by her alienation she hath utterly dismissed her selfe to have any part of the tenements as parcener: But if the younger sister before the entry of the Infant make thereof a lease for terme of yeares, or for terme of life or in fee taile, saving the reversion to her, and after the child entreth, there peradventure it is otherwise, for this, that shee dismitteth not her selfe of all that was in her, but hath reserved to her the reversion and the fee simple, &c.

Also, if there be three or foure Parceners that make partition between them, if the part of the one parcener be defeated by such lawfull entry, she may enter and occupy the other Lands of all the other parceners, and compell them to make new partition of the other lands between them, &c.

Also if there be two Parceners, and the one taketh an husband, and the husband and the

wife have iſſue between them, and the wife dieth, and the husband holdeth him in the laike as tenant by the courteſie: in this caſe the Parcener that ſurviveth and the tenant by the courteſie may well make partition between them &c. And if the tenant by courteſie will not agree to make partition, then the parcener that ſurviveth may have a Writ de Participatione facienda, &c. and compel him to make partition. But if the tenant by the courteſie will have partition between them and the parcener that ſurviveth will not have it then the tenant by the courteſie ſhall have no remedy for to have partition: for he may not have a Writ de Participatione facienda, for this that he is not parcener, for ſuch a Writ lieth for Parceners only And ſo may you ſee that the Writ de Participatione facienda lieth againſt tenant by the courteſie, and yet himſelfe may not have ſuch a Writ.

Parceners by Cuſtome.

PArceners by the Cuſtome be where a man ſeiſed in fee or fee taile of lands or tenements that be of the tenure called Gavelkind within the Shire of Kent, and hath iſſue divers Sons and dieth, ſuch Lands and Tenements ſhall deſcend to all the Sons by the Cuſtome, and they evenly ſhall inherit and make partition between them by the Cuſtome as Females do, and a Writ de Participatione facienda lieth in this caſe as between females, but it behoveth in the Declaration to make mention of the Cuſtome. Alſo ſuch Cuſtome is in other places in

England.

England. And also such Custom is in North Wales.

Also there is another Partition that is of mother nature, and in another forme than any of the partitions aforesaid: As a man seised of certain lands in fee simple hath issue two daughters, and the elder is married, and the father giveth parcel of the same Lands to the husband with his daughter in frankmarriage and dieth seised of the remnant, the which remnant is of more greater value by years than be the Lands given in frankmarriage: In this case the husband and the wife shall have nothing for their part of the said remnant, but if they will put in their Lands given in frankmarriage in hotchpot with the remnant of the land with her Sister, and if they will not do so, then the younger Sister may occupy the same remnant and take to her the profits only. And it seemeth that this word Hotchpot is in English a pudding, for in such a pudding is commonly put not one only thing, but one thing with another, and for this it behoveth in such a Case to put the lands given in frankmarriage with the other lands in Hotchpot, if the Husband and the Wife will have any thing in the other remnant, &c. This word Hotchpot is but a terme of similitude, and is as much to say, as to put lands given in frankmarriage, and other lands in fee simple &c. together, and this is to such intent to account the value of all the lands, that is to say, of the lands given in frankmarriage, and the remnant that was not given, and then partition shall be made in this

forme that ensueth. As put case that a man is seised of thirty acres of land in fee simple, every acre in value twelve pence by the year, which hath issue two daughters, and the one is covert baron, and the father giveth ten acres of the thirty acres to the husband with his daughter in Frankmarriage and dyeth seised of the remnant, then the other sister shall enter into the remnant, that is to say, in the twenty acres, and shall occupy it to her owne use, except the husband and the wife will put their ten acres given to them in frankmarriage with the other twenty acres in Hotchpot, that is to say, together, and then when the value is known of every acre, that is to say, every acre is yearely worth twelve pence, then the partition shall be made in such forme, that is to say, that the husband and the wife shall have above the ten acres given to them in frankmarriage five acres in severalty of the xx. acres, and the other sister shall have the remnant, that is xv acres of the xx acres for her part, so that accounting the ten acres that the husband and the wife had in Frankmarriage, and the other five acres of the twenty acres, the husband and the wife hath as much in yearly value as the other sister hath, and so alwayes upon such partition the lands given in Frankmarriage, abide to the donees, or to the heires, &c. after the forme of the gift, &c. For if the other parcener should have any thing of this that is given in Frankmarriage, of this should follow an inconvenience, and a thing against reason, which the Law will not suffer, &c. And the cause why the lands given in frankmarriage shall be put

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in hotchpot, is this, that when a man giveth lands and tenements in Frankmarriage with his daughter, or with his own cosin, it is to be understood by the Law, that such gift made by such words, Frankmarriage is an advancement of his daughter, or if his cosin, and namely when the donor and his heires shall not have any rent or service of him, except fealty, until the fourth degree be passed, &c.

And for such cause the Law is that she shall have nothing of the other lands and tenements descended to the other parceners, &c. if shee will not put the tenements given in frankmarriage in hotchpot, as is aforesaid. and if she will not put the lands given in frankmarriage in Hotchpot, then she shall have nothing in the remnant, for this, that it shall be understood by the Law, that she is sufficiently advanced, to which advancement she agreeth & holdeth her self contented

The same Law is betweene the heires of the Donees in Frankmarriage and the parceners, &c. if the Donees in Frankmarriage die before their Ancestors, or before such partition, &c. as to put in Hotchpot, &c.

And note well, that gift in Frankmarriage was by the common Law, before the Statute of Westminster the second, and allway after so hath been used and continued, &c.

Also, such putting in hotchpot, &c. is where the others lands or tenements that were not given in frankmarriage descend from the donor in frankmarriage only; for if the lands descend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the do-

nor, or other Auncestors, and not by the donor, &c. there it is otherwise, for in such case the to whom such gift in Frankmarriage is made, shall have her part as if no such gift in Frankmarriage had been made, for this, that she was not advanced by him, &c. but by another.

Also, if a man seised of thirty acres of Land, every acre of even yearely value, having issue two daughters, as is aforesaid, and giveth of this to the husband of the daughter fifteene acres in frankmarriage and dyeth seised of the other fifteene acres, in this case, that other sister shall have the fifteen acres so descended to her only, and the husband and the wife shall not put in such case the fifteene acres to him given in Frankmarriage in Hotchpot &c. for this that the Tenements given to him in Frankmarriage be of as good yearely value as the other Lands descended, &c. For if the lands given in Frankmarriage were of as even value as the remnant, or in more value then in vaine and to none intent such lands given in Frankmarriage shall be put in Hotchpot, &c. for this that shee may have nothing of the other lands descended, &c. For if shee should have any parcell of the other lands descended, then should she have more in yearely value then her sister, &c. which the Law will not, &c. And as it is said in the cases aforesaid of two daughters, or two parceners, in the same manner, and in like case is, where there be more sisters, after that as the case and the matter be &c.

And it is to wit, that lands and tenements given in Frankmarriage, shall not be put in Hotch-

Hotchpot, but with the Lands descended in fee simple; for of lands descended in fee taile, partition shall be made as if no such gift in Frankmarriage had been made. Also no lands shall be put in Hotchpot with other, but lands that bee given in Frankmarriage only. For if any woman have any other lands or tenements by any other gift in the taile, she shall never put such lands so given in Hotchpot, &c. but she shall have the part of the remnant descended, &c. that is as much as the other parcener shall have of the same remnant.

Also, another partition may be made between Parceners, and variety from the partitions aforesaid: As if there be three Parceners and the youngest would have partition and the other two would not, but will hold in parcenary, that that to him belongeth without partition: In this case, if one part be allotted in severalty to the younger sister after that that shee ought to have, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And after the elder and middle parcener will make partition between them of that that they held, they may well doe so when they please. But where partition shal be made by force of a writ de participatione faciendâ, &c. there otherwise it is, for there it behooveth that every parcener have his part in severalty &c. More shall be said of Parceners in the Chapter of Joyntenants, and also in the Chapter of Tenants in Common.

Joyntenants

Joyntenants.

JOyntenants be, as a man seised of certaine lands or tenements, &c. and thereof hath enfeoffed, two, or three, or foure, or more to have and to hold to them and to their heires, or to have and hold to them for terme of their lives, or for terme of anothers life, by force of which feoffement they be seised, such be joyntenants.

Also, if two or three disseise another of any lands or tenements to their owne use, then the disseisors be Joyntenants: But if they disseise another, to the use of one of them, then be they no Joyntenants, but he to whom the use of the disseisin is made is sole tenant, and the other have nothing in the tenancy, but be called coadjutors to the disseisin, &c.

And note well, that disseisin is properly where a man entreth into any Lands or Tenements, where his entry is not lawfull, and putteth him out, that hath the frankstenement, &c. And it is to wit, that the nature of Joyntenancy is, that he that surviveth shall have only the whole tenancy, after such estate as he hath if the joynture be continued, &c. As if three joyntenants be in fee simple, and the one hath issue and dyeth, yet they that survive shall have the tenements whole, and the issue shall have nothing, and if the second Joyntenant have issue, and die, yet the third that surviveth shall have the tenements whole, and shall have them in fee simple to him and to his heires. But otherwise it is of parceners, for if three parceners be, and be-

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fore any partition the one hath issue and dyeth, that that to her belongeth shal descend to her issue, and if such a parcener dye without issue then that coat to her belongeth shall descend to her coheires, so that they shall have this by descent, and not by the survivor as Joyntenants have &c. And as the survivor holdeth place among Joyntenants, &c in the same manner it holdeth place among them that have joynt estate or possession with others of chattels reall or chattels personall. As if a lease of lands or tenements be made to many for terme of yeares he that surviveth of the lessees shall have the tenements whole to him during the terme by force of the same lease. And if an horse. or other chattels personall be given to to many men, be that surviveth shall have them to himselfe.

In the same manner it is of debts and duties &c For if an obligation be made to many for one duty. he that surviveth shall have all the debt and so it is of all other covenants and contracts

Also some joyntenants may be that may have joynt estates, and bee joyntenants for term of their lives. and yet they have severall inheritance: As if lands be given to two men, and to the heires of their two bodies ingendred: In this case the donees have joynt estate for terme of their two lives, and they have severall inheritance: for if the one of the donees have issue and dye, the other that surviveth shall have all by the survivor for terme of his life. And if he that surviveth hath also issue and dye, then the issue of the one shall have the halfe of the land, and the

issue

iſſue of the other ſhall have the other halfe of the Land, and they ſhall hold the Land betweene them in common, and be not joyntenants but tenants in common And the cauſe that ſuch Donees in ſuch caſes have joynt eſtate for terme of their lives, is this, for this that at the beginning Lands were given to them two, which words without more saying, made a joynt eſtate to them for terme of their lives For if a man will let Land to another by Deed, or without Deed, not making mention what eſtate hee hath, and of this maketh livery of ſeiſin: In this caſe the Leſſee ſhall have eſtate for terme of his life, and ſo in ſo much that the lands were given to them, they have a joynt eſtate for terme of their lives And the cauſe why they have ſeveral inheritance is this, inſomuch that they cannot by poſſibility have an heire between them ingendred as a man and a woman may have, &c then the Law will that their eſtate and their inheritance ſhall be ſuch, as reaſon will after the forme and effect of the words of the gift, and that is to the heires that the one ingendereth of his body by any of his Wives, and the heires that the other ingendereth of his body by any of his Wives, &c. So it behooveth by neceſſity of reaſon, that they ſhall have ſeveral inheritances And in ſuch caſe, if the iſſue of one of the Donees after the death of the Donees die, ſo that he hath no iſſue alive of his body ingendred, then the Donor or his heirs may enter in the halfe as in his reverſion, though the other of the Donees hath iſſue alive, &c. And the cauſe is, for ſo much as

as the inheritance is severed, &c. the reversion in the Law is severed, &c. and the survivor of the issues of the other shall hold no place to have the whole. And so as it is said of the Males, in the same manner it is where land is given to two females, and to the heires of their two bodies begotten.

Also if Lands be given to two females, and to the heires of one of them this is a good Joynture, and the one hath a freehold, and the other hath fee simple, and if she that hath the fee dye, she that hath the freehold shall have the whole by the survivor for terme of life. In the same manner it is where tenements be given to two, and to the Heires of the body of one of them ingendred, the one hath freehold, and the other fee taile. Also if two Joyntenants be seised of estate of fee simple, and the one granteth a rent charge by his deed to another out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is void, as to charge the Land, for that he that hath the Land by the survivor shall have the Land discharged and the cause is for this, that he that surviveth claimeth to have the land by the survivor &c and not by descent of his fellow &c. But otherwise it is of parceners; for if there be two parceners of tenements in fee simple and before any partition the one chargeth that that to him belongeth by his deed with a rent charge &c and dieth without issue, and that that to him belongeth descendeth to the other parcener: In this Case the other parcener shall hold the Land charged, &c. for this

this that he cometh to the halfe by defcent as heire. &c.

Alſo if there be two Joyntenants in fee ſimple within a Bourough where the Lands and Tenements within the ſame Bourough be deviſable by Teſtament, if the one of the ſaid Joyntenants deviſe that, that to him belongeth by Teſtament. &c and dye, this deviſe is void. And the cauſe is this that no deviſe in y take effect but after the death of the deviſor And for this, that by his death all the Land incontinent commeth by the Law to his fellow that ſurviveth, by the ſurvivor which neither claimeth nor hath any thing in the Land by the deviſe, but in his own right by the ſurvivor after the courſe of the Law, &c. for this cauſe ſuch deviſe is void.

But otherwiſe it is of Parceners ſeiſed of Tenements deviſable in ſuch caſe of deviſe, &c. Cauſa qua ſupra.

Alſo it is commonly ſaid, that every Joyntenant is ſeiſed of the land that he holdeth joyntly, &c. throughout and by all. And this is as much to ſay, that he is ſeiſed by every parcel and by all. &c. and this is true for in every parcel and by each parcel and by all the lands & tenements he is joyntly ſeiſed with his fellows, &c.

And if two Joyntenants be ſeiſed of certaine Land in fee ſimple. and the one letteth that that to him belongeth to a ſtranger for terme of foxty yeers and dieth within the terme. In this caſe after his deceaſe the Leſſee may enter and occupy the halfe to him letten during the terme &c. though the Leſſee never had poſſeſſion of it in the life

life of the Lessor by force of this lease, &c. And the diversity between the case of the grant of a rent charge and this case is this, for in the grant of a rent charge by a joyntenant, the tenements abide alway as they were before without that that any hath any right to have parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge, &c. But where a Lease is made by a Joyntenant to another for terme of yeares, &c. incontinent by force of the Lease, the Lessee hath right in the same land, that is to say, of all that that to his Lessor belonged, and to have that by force of the same lease during his terme, &c. and this is the diversity, &c.

Also, Joyntenants if they will may make partition between them, and the partition is good enough, but they shall not be compelled by the Law to do it, but if they will make partition of their proper will and agreement, the partition shal stand in his strength. P. 3. E. 4. See Sta. 31. H. 8. ca. 21. and 22 H 8 ca 32.

Also if a joynt estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife have not in the Law in their right but the halfe, &c. And the third person shall have as much as the husband and the wife have, that is to say, the other halfe, &c. And the cause is, for that the husband and the wife be but one person in the Law, and be in like case as if the estate be made in two joyntenants where each one hath by force of the joyntures the one halfe, and the other the other halfe. In the same manner it is, where an estate

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is made to the husband and the wife, and to e-ther two men, in this case the husband, and the wife he be not but the third part, and the other two men the other two parts &c Causa qua supra. More shall be said of the matter touching Joyntenancy, in the Chapter of Tenants in common.

Tenants in Common.

TEnants in Common be they, that have lands and tenements in fee simple fee taile, or for terme of life &c. which have such lands and tenements by severall title, and not joynt title, and none of them knoweth that that is severall to him. But they ought by the Law to occupy such lands and tenements in Common and undivided to take the profits in common. And because that they come to such lands and tenements by severall titles, and not by one selfe joyntitle, and their occupation and possession shall be by the Law among them in common, therefore they be called Tenants in Common: As if a man enfeoffe two Joyntenants in fee, and one of them alieneth that that to him belongeth to another in fee, now the other Joyntenant and the alienee be tenants in common, for this that they be seised in such tenements by severall titles, for the alienee commeth to the halfe by the feoffment of the one joyntenant and the other joyntenant hath the other halfe by force of the first feoffment made to him and to his first fellow, and so they be seised by severall titles, and by severall feoffements, &c. And it is to wit, that when it is said

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in any Booke, that a man is seised in fee without more saying, it shall be understood fee simple, for it shall not be understood by such word in fee that a man is seised in fee taile, except that there be put thereto such addition, that is to say, fee taile.

Also, if three Joyntenants be, and the one of them alieneth that that to him belongeth to another in fee: In this case the alienee is tenant in common with the other two Joyntenants. But yet the other two Joyntenants be seised of the two parts jointly, and of these two parts the survivor betweene them holdeth place, &c.

Also, if there be two Joyntenants in fee, and the one giveth that that to him belongeth to another in the taile, the donee and the other Joyntenant be tenants in common, &c. But if the lands be given to two men, and to the heires of their two bodies ingendred, the donees have joynt estate for terme of their lives, and if each of them have issue and dye, their issue shall hold in common, &c. But if lands be given to two Abbots, as to the Abbot of Westminster, and to the Abbot of Saint Albons, to have and to hold to them and to their successors, in this case they have incontinent at the beginning estate in common, and not joynt estate: And the cause is for this, that every Abbot, or other Soveraigne of an house of Religion, before that hee be made Abbot, or Soveraign, was but a dead man in the Law. And when he is made Abbot, he is as a man personall in the Law, all onely to purchase, and to have Lands and Tenements and other things to the use of his house, and not to his owne proper use, as other secular

men may. And for this, in the beginning of their purchase they be tenants in common. And if one of them dye, the Abbot that surviveth shall not have all by the survivor, but the successors of the Abbot that dyeth shall hold the halfe in common with the Abbot that survyeth &c.

Also, if lands be given to an Abbot and to a secular man to have and to hold to them, that is to say to the Abbot and his successors, and to the secular man to him and to his heires, they have estate in common. Causa qua supra.

Also, if lands be given to two men, to have and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common &c.

Also, if a man seised of certaine Lands enfeoffeth another in the halfe of the same land, without any speech of assignement or limitation of the same halfe in severalty at the time of the feoffement, then the feoffee and the feoffor shall hold the parts of the land in common. And in the same manner, as is aforesaid of tenants in common of lands or tenements in fee simple or in fee taile, in the same manner may it be said of tenants for terme of life. As if two Joyntenants be in fee, and the one letteth to a man that that unto him belongeth for terme of life, and the other Joyntenant letteth that that unto him belongeth to another for terme of life these two lessees be tenants in common for terme of their lives &c.

Also, if a man let lands to two men for terme of their lives, and the one granteth all his estate of that that unto him belongeth to another, &c. then the other tenant for terme of life, and he to whom the grant is made be tenants in common during

during the time that both lessees be alive.

Also it is to be remembred, that in all other such cases, though that they be not here expresly named or specified, if they be in like reason, they be in like law.

Also if there be two Joyntenants in fee, and the one letteth that that unto him belongeth to another for term of life, the tenant for terme of life during his life, and the other joyntenant that did not let the tenants in common, And upon this case a question may rise, as this: Put the case that the Lessor hath issue and dieth, living the other Jointenant his fellow, and living the tenant for tearm of life, the question may be such, if the reversion of the half, &c. that the lessor hath shall descend to the issue of the lessor, or that the other Joyntenant shall have it by the survivor. And some have said in this case, that the other Joyntenant shall have the reversion by the survivor, and their reason is such, when two Joyntenants were joyntly seised in fee simple, &c though the one of them made Estate of that that unto him belongeth for term of life, and though that he hath severed the frankstenement of that that to him belongeth by the Lease, yet he hath not severed the fee simple, but the fee simple abideth to him joyntly as it was before. And so it seemeth unto them that the other Joyntenant that survi-veth, shall have the reversion by the survivor, &c. And others have said the contrary, & this is their reason, when one of the Joyntenants letteth this that to him belongeth to anoth r for terme of his life, that by such Lease the Frankstenement is severed from the Joynture: and by the same reason the reversion that is dependant upon the

same franktenement is severed from the joynture. Also, if the Lessor had reserved to him a yearely rent upon the Lease, the Lessor only should have had the rent, &c. Which is a proofe that the reversion is only to him, and that the other hath nothing in the reversion, &c. And if the tenant for terme of life were impleaded, &c. and made default after default, then the Lessor shall be onely of this received to defend his right, and his fellow in this case in no manner shall be received: which proveth that the reversion of the halfe is onely in the Lessor. And so by consequence if the Lessor dye, living the Lessee for terme of life, the reversion shall descend to the heires of the Lessor, &c. and not come to the other Joyntenant by the survivor, Ideo quære. But in this case, if the Joyntenant that hath the franktenement have issue and dye, living the Lessor and the Lessee then it seemeth that the issue shall have the halfe in his demeine as of fee by descent for this that the franktenement may not by nature of the Joynture be annexed to a reversion. And it is certaine that he that did not let was seised of the halfe of his demeine and of fee, and none shall have any Joynture in his franktenement, Ergo this shall descend to his issue, Sed quære. But if be thus that the Law in this case is thus, that if the Lessor dye, living the Lessee, and living the other joyntenant that hath the Franktenement of the other halfe, that the reversion shall descend to the issue of the lessor then is the Joynture and the title that any of them may have by the survivor by right of the Joynture annulled, and all utterly defeated for ever.

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In the same manner it is, if the Joyn tenant that hath the Franktenement dye, living the Lessor and the Lessee, if the Law be such that his Franktenement and fee that he hath in the halfe shall descend to his issue, then the jointure shall be defeated for ever, &c.

And if three Joyntenants bee, and the one releaseth by his deed to one of his Fellows all the right that he hath in the land, then hath hee to whom the release is made, the third part of the lands by force of the release, and he and his fellow shall hold the other two parts joyntly. And as to the third part that he hath by force of the release, he holdeth the third part with himselfe and his fellow in common.

And it is to wit, that sometime a deed of release shall take effect, and shall be in ure to put the estate of him that made the release, to him to whom the release is made, as in the case aforesaid.

And also if a joynt Estate bee made to the husband and his wife, and to a third person, and the third person releaseth his right that he hath, &c to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release, &c. to the wife, not naming the husband in the release, then hath the wife the halfe that the third person had, and the husband hath nothing of this, but in right of his wife, for this that in such case the release shall inure to put the estate to him to whom the release is made, of all that that belongeth to him that made the release. And in some case a release shall

inure to put all the right that he hath that made the releafe to him to whom the releafe is made. As if a man feifed of certaine lands and Tenements is diffeifed by two diffeifors, if the diffeifee by his deed releafe all his right, &c. to one of the diffeifors, then he to whom the releafe is made, fhall have and hold all the Tenements to him only, and put his fellow out of every occupation of it: and the caufe is, for this, that the two diffeifors were feifed in the Tenements by wrong of them done againſt the Law. And when one of them hath the releafe of him that hath right to enter, &c. this right in fuch cafe refted in him to whom the releafe is made, and in fuch plight as if he that had the right and entred and enfeoffed him, &c. And the caufe is for this, that he that before had an eſtate by wrong, that is to fay, by diffeifin, now by the releafe hath a rightfull eſtate.

And in fome cafe a releafe fhall enure by way of extinguifhment, and in fuch cafe fuch releafe fhall help the Joyntenant to whom the releafe is not made, as well as him to whom the releafe is made. As if a man be diffeifed and the diffeifor maketh a feoffement to two men in fee, if the diffeifee releafe to one of the feoffees in fee by his deed, then fuch a releafe fhall enure to both the feoffees, for this, that the feoffees have eſtate by the Law, that is to fay by the feoffement, and not by any wrong done to any other

And in the fame manner it is, if the diffeifor make a releafe to a man for terme of life, the remainder over to another in fee, if the diffeifee releafe to the Tenant for terme of life, all his right, &c. this releafe enureth as well to him in

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the remainder, as to the tenant for terme of life, &c And the cause is for this, that the tenant for terme of life commeth to his estate by the course of the Law. and for this the release shall enure and take effect by way of extinguishment of the right of him that hath released, &c And by this release the tenant for terme of life hath no greater estate then he had before the release made unto him, and the right of him that released is all utterly extinct And insomuch that such release cannot inlarge the estate of the tenant for terme of life, it is reason that the release shall enure to him in the remainder &c. More shall be said of Releases in the Chapter of Releases.

Also. if their be two parceners, and the one alieneth that that unto him belongeth to another, then the other parcener and the alienee be tenants in common.

Also, Tenants in common may be by title of prescription if the one and his ancestors, or they whose estate he hath in the halfe have holden in Common, the same halfe with the other tenant that hath the other halfe, and with his ancestors of them whose estate he hath as undivided from time whereof no mem. ory runneth And divers other matters may make and cause men to be tenants in common that be not here expressed.

Also, in some case tenants in common ought to have of their possession severall actions, and in some cases they shall joyne in one action: for if there be two Tenants in common, and they bee disseised, they ought to have against the disseisor two Assises. and not one Assise for every of them ought to have an Assise of his halfe. &c. and the cause is for this, that tenants in common were

seised by severall titles: But otherwise it is of Joyntenants, for if there be twenty Joyntenants, and they be disseised, they shall have in all their names but one assise, because that they have had but one Joynt title.

Also, if there be three Joyntenants, and one releaseth to one of his fellows all the right that hee hath, and after the other two be disseised of the whole, &c. in this case the other shall have severall Assises in this forme, that is to say, they shall have in both their names one assise of the two parts, &c. for this that they held the two parts joyntly at the time of the disseisin: And as to the third part, he to whom the release is made, ought to have thereof an assise in his owne name, for this, that as to the third part he is tenant in common &c. for this that he came to the third part by force of the release, and not only by force of the joynture.

Also, as to sue actions that touch the realty, there is diversity between parceners that bee in by divers descents and tenants in common. For if a man seised of certaine lands in fee, have issue two daughters and dye, and they enter, &c. and each of them hath issue a son, and dieth without partition made between them, by which the one halfe descendeth to the son of the one parcener, and the other halfe descendeth to the son of the other parcener, and they enter and occupy in common, and be disseised: in this case they shall have in the two names one assise, and not two assises; and the cause is, that though they come in by divers descents, &c. yet they be parceners, and a writ de participatione faciendâ lyeth between them, and they be not parceners, having

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regard or respect onely to the seisin and possession from their mothers, but they be parceners, having more respect to their estate that descended from their grandfather to their mothers. For they may not be parceners, where their mothers were not parceners before, &c. And so to such respect and consideration, that is to wit, as to the first descent, that was to their mothers, they have a title in parcenary the which maketh them parceners: And also they be but as one heire to their common ancestor, that is to say, to their Grandfather, from whom the land descended to their Mothers: And for these causes before partition between them, &c. they should have one assise, though they come in by several descents &c.

Also, if there be two tenants in common of certaine Lands in Fee, and they give the same Land to another man in the taile or let it to another man for terme of life, yeelding an annuity, or certaine rent, and a pound of pepper, or an Hawke, or an Horse and they be seised of these services, and after all the rent is behind, and they distraine for it, and the tenant maketh rescous. In that case, as to the rent and the pound of Pepper, they shall have two Assises: And as for the Hawke, and the Horse, but one assise. And the cause why they have two assises, as the rent and the pound of Pepper, is this, inasmuch that they were tenants in common by several titles, and when they make a gift in the taile, or lease for terme of life, &c. saving to them the reversion, and yeelding to them certaine rent, &c. Such reservation is incident to their reversion. And for this that their rever-

reuerſion is in common and by ſeuerall titles as their poſſeſſion was before, the rent and other things that may be ſeuered and were to them reſerued upon the gift or upon the Leaſe which be incident by the Law to the reuerſion ſuch things ſo ſeuered were of the Nature of the reuerſion, which reuerſion is to them in common by ſeuerall titles.

And it behooueth that the rent of the pound of pepper, which may be ſeuered to them in common by ſeuerall Titles. And of this they ſhall haue two aſſiſes, and euery of them in his aſſiſe ſhall make his plaint of the halfe of the rent, and of the halfe of the pound of pepper &c.

But of the Hawke and the Hoyſe which cannot be ſeuered, they ſhall haue but one aſſiſe, for a man may not make a plaint in aſſiſe of the halfe of an Hawke, or the halfe of an hoyſe, &c. In the ſame manner it is of other rents and ſeruices that Tenants in common haue in groſſe by diuers titles.

Alſo, as to actions perſonals, Tenants in common ought to haue ſuch actions perſonals joyntly in all their names that is to ſay of treſpaſſe, or offences that touch their Tenements in common: as of breaking of their Houſes, breaking of their Clothes and Paſtures, waſting and defouling of their graſſe, cutting of their wood, and to fiſh in their ponds, and ſuch other: In this caſe tenants in common ſhall haue one action joyntly and recouer joynt damages, becauſe that the action is in the perſonalty, and not in the realty.

Alſo if two tenants in common make a leaſe of their two tenements to another for terme of

years,

yeeres, yeelding unto them yearely a certaine rent, if the rent be behind, &c. the tenants shall have an action of debt against the Lessee, and not divers actions, for that the action is in the personalty.

Also, tenants in common may make partition between them if they will though they shall not be compelled by the Law. But if they make partition between them by their agreement and consent, such partition is good enough, as it is adjudged in the book of Assises, P. 3. E. 4.

Also, as there be tenants in common of lands of tenements &c. as is aforesaid In the same manner there be tenants in common of chattels, reall, and chattels personals. As if a Lease bee made of certaine lands to two men for terme of twenty yeares and when they be therof possessed, the one of the lessees granteth that that unto him belongeth during the terme to another, then he to whom the grant is made, and the other shall hold and occupy in common.

Also, if two Joyntenants have the ward of the body and of the lands of a child within age, and the one of them granteth to another that that unto him belongeth of the same ward then the grantee and the other that granteth not, shall have and hold it in common, &c.

In the same manner it is of chattels personals: As if two have a joynt estate by gift or by buying of an Horse, or an Ore &c. the one of them granteth that that unto him belongeth of the same Horse, or Ore, &c. Then the grantee and he that granteth not, shall have and possesse such chattell personall in common, &c. And in such cases where divers persons have chattels reals

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or personals in common, and by divers titles, and one of them dye, the other that surviveth shall not have that by the survivor. But the executors of him that dyeth shall hold and occupy that with him that surviveth as their testator did or ought in his life, &c. for this that their titles and right in this case were severall.

Also, in this case aforesaid, if two have estate in common for terme of yeares, and the one occupy all and put the other out of his possession and occupation: then shall he that is put out of occupation have against the other a writ de Ejectione firmæ for the halfe against the other. In the same manner it is, where two hold the ward of lands or tenements during the nonage of the child if one put out the other of his possession, he that is out shal have a writ of Ejectment de garde of the halfe, for this that those things bee Chattels reals, and may be apportioned and severed &c. But no such action of trespasse, that is to say, Quare clausum suum fregit, & herbam suam concuscavit & consumpsit, &c. and such like actions the one may not have against the other, for this that each of them may enter and occupy in common, &c. throughout and by all the tenements which they hold in common. But if two be possessed of chattels personals in common by divers titles, as of an horse, or an ore, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may see his time.

In the same manner it is of Chattels reall that may not be severed, as in the case aforesaid:

ſaid: To be poſſeſſioners of a Ward of the body of a child within age, if one take the child out of the poſſeſſion of the other, the other hath no remedy by any action by the law, but to take the child out of others poſſeſſion when he ſeeth his time.

Alſo, when a man in pleading will ſhew a deed of Feoffement made unto him, or a deed in the taile, or a leaſe for terme of life of any lands or Tenements, there he ſhall ſay by force of which feoffement, gift, or leaſe, he was ſeiſed, &c. But where a man will pleade a leaſe or grant made unto him of a Chattell reall or perſonall, there he ſhall ſay by force of which he was poſſeſſed.

More ſhall be ſaid of Tenants in common in the Chapter of Releaſes, and Confirmations.

Eſtates upon condition.

ESTates that men have in Lands or Tenements upon condition, be in two manners: that is to ſay, they have eſtate upon condition in deed, or upon condition in Law. Upon condition in deed, is as a man by deed indented infeoffeth another in fee, reſerving to him and to his heires yearely a certaine rent, payable at one Feaſt, or at divers Feaſts by the yeare, upon condition, that if the rent be behind, &c. that it ſhall be lawfull to the feoffor and to his heires to enter into the Lands or Tenements, &c. Or if the Land be alienated to another in Fee, to yeeld unto him certaine rent, &c. And if it hap that the rent be behinde by a weeke after any day of payment of it, or by a Moneth,

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or by a halfe yeare after any day of payment, that then it shall be lawfull to the feoffer and to his heires to enter, &c. In this case, if the rent be not paid at such a day, or before such a time limited and specified within the Condition comprised within the Indenture, then may the Feoffor or his heirs enter into such Lands or Tenements, and then in his first estate to have and to hold, and of this to put the Feoffee clean out: And it is called Estate upon Condition, for this, that the estate of the feoffee is defeasible, if the condition be not performed.

In the same manner it is if lands be given in the taile, or let for term of life or for terme of yeares, upon such a condition, &c. But where a feoffment is made of certaine Lands, reserving certain rent upon such condition, that if the rent be behind, that it shall be lawful for the Feoffor and his heires to enter, and the land to hold till they be satisfied or payed off their rent behind, &c. In this case if the rent be behind, and the feoffor and his heirs enter, the feoffee is not excluded clean out, but the feoffor shall have and hold the land, and take the profits till that he be satisfied of the rent behind, &c. And when he is satisfied, the feoffee may reenter in the same land, and hold it as he did before. for in such case the feoffor shall have it but in manner for a distresse, in the mean time till he be satisfied of the rent, &c. though he take the profits in the meane time.

Also, divers words among other there be, that by vertue of themselves make Estate upon Condition. One is this word of Condition, as A enfeoffed B. of certain Land, to have and to

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hold to the ſame B. and to his heires upon condition, that the ſame B. and his heires ſhall pay, or doe to be paid to the aforeſaid A. and to his heires yearely ſuch rent, &c. In theſe caſes without any more ſaying the feoffee hath eſtate upon condition. Alſo, if the condition were ſuch, proviided alway, that the aforeſaid B. pay, or doe to be paid to the aforeſaid A. ſuch rent: Or if they were thus, ſo that the aforeſaid B. pay, or do to be paid ſuch rent: In theſe caſes without any more ſaying the feoffee hath eſtate but upon condition ſo that if he performe not the condition, the feoffor and his heires may enter &c.

Alſo, other words there be in a deed that cauſeth the tenements to be conditionall, as upon ſuch a feoffement a rent is reſerved to the feoffor &c. and after it is put in the deed, that if it chance the aforeſaid rent to bee behind in part or in all, &c. that then it ſhall be lawfull to the feoffor, and to his heires to enter, and this is a deed upon condition, But there is a diverſity betweene the words (if it chance, &c.) and the words next aforeſaid, for this word (if it chance, &c.) is nought worth to ſuch condition but if it hath theſe words following that is to ſay that it ſhall be lawfull to the feoffor, and to his heires to enter, &c. But in theſe caſes aforeſaid it needeth not by the Law to put ſuch clauſe, that is to ſay, that the feoffor and his heires may enter, &c. for this that they may ſo doe by force of the words aforeſaid, becauſe they contain in themſelves in the Law a Condition, that is to ſay, That the feoffor and his heires may enter. Yet it is common in all ſuch caſes aforeſaid to put ſuch clauſes in the deeds, that is to ſay, if the rent

be

be behind &c. that it shall be lawfull to the same Feoffor and his heires to enter, &c And this is well done to that intent for to declare and expresse to the lay men that be not learned in the Law, the manner and the condition of the feoffement, &c. As a man seised of land as of franktenement, lets the same land to another for deed indented for terme of yeares, yeelding unto him certaine rent, it is used to be put in the deed, that if the rent be behind at the day of payment, by a Month &c that then it shall be lawfull to the Lessor to distraine &c. and yet the Lessor may distraine of common right for the rent behind, &c though such words were never set in the deed, &c.

Also, if a feoffement be made upon such condition, that if the feoffor pay at a certaine day &c twenty pounds of money, that then the Feoffor may enter, &c. In this case the Feoffee is called Tenant in Wortgage, that is as much to say in French, as Wortgage, and in Latine Mortuum vadium, and in English a deed pledge. And it seemeth that the cause why it is called Wortgage; is that it standeth in doubt if the feoffor will pay at the day limited, such a sum or not: And if he pay not, then the land that is put in pledge upon the condition for the payment of the money, is gone from him for ever, and so dead as to the Tenant, &c.

Also, as a man may have a Feoffement in fee in Wortgage, so may a man make a gift in the taile in Wortgage and a lease for terme of life, or for terme of yeares in Wortgage. And all such tenants be Tenants in Wortgage, after the state that they have in the lands, &c.

Also, if a Feoffement be made in Wortgage,

upon

upon condition that the Feoffor ſhall pay ſuch a ſum at ſuch a day, &c. as is between them by their deed indented, accorded and limited, though the Feoffor dye before the day of payment, &c. yet if the heire of the Feoffor pay the ſum within the day to the Feoffee, or proffer him the mony and the Feoffee refuſe to receive it, then may the heire enter into the Lands. And yet the condition is, if the Feoffor pay ſuch a ſum ſuch a day &c. and not making mention in the condition of any payment to be made by his heire, but for this that the heire hath intereſt of right in the condition, &c. And the intent was, but that the mony ſhould be paid at ſuch a day ſet, &c. and the feoffee hath no more damage to be paid by the heir, then though he were paid by the father, &c. for this, cauſe if the heire pay the money, or tenderth the money at the day ſet, &c. and the other refuſeth it, he may well enter. But if a ſtranger of his own head that hath no intereſt, &c. would tender and pay the mony at the day ſet, then the Feoffee is not bound to receive it, &c.

Alſo, it is to be had in minde, that in ſuch caſe where ſuch lawfull tender of the money is made, and the Feoffee refuſeth to receive it, wherfore the Feoffor or his heires do enter, &c. then the Feoffee hath no remedy to have the money by the common law, for this, that it ſhall be counted his own folly that he refuſed the money when lawfull proffer was made of it unto him, &c.

Alſo, if a Feoffement be made with ſuch condition, that if a Feoffee pay to the Feoffor at ſuch a day between them limited twenty pound, that then the Feoffee ſhall have the land to him and to his heires, and if he faile to pay the money

at the day, &c. that then it shall be lawfull to the feoffor, or to his heires to enter, &c. And if after before the day set the feoffee selleth the land to another, and thereof make a feoffement unto him, in this case if the second feoffee will tender the sum of money at the day set to the Feoffor, and the Feoffor refuseth it, &c. then hath the second feoffee estate in the land clearly without condition: And the cause is, for the second Feoffee hath interest in the condition for salvation of his tenancy And in this case it seemeth, that if the first feoffee after such sale of land will tender the mony at the day set, &c. to the feoffor, that shall be good enough for the salvation of the estate of the second feoffee: for this, that the first feoffee was privy to the condition, and so the tender of any of them is good enough, &c.

Also, if the feoffement be made upon condition, that if the feoffor pay a certaine summe of money to the Feoffee: that then it shall be lawfull to the Feoffor and to his heires to enter &c. In this case if the Feoffor dye before the day of payment, and the heire will tender to the feoffee the money, such tender is voyd, for this that the time within which the tender ought to bee made is past For when the condition is, that if the Feoffor pay the money to the Feoffee, this is as much to say, that if the feoffor during his life pay the money to the Feoffee, &c. And when the Feoffor dyeth, then the time of the tender is past But otherwise it is where day of payment is limited, and the Feoffor dyeth before the day, then may the heire tender the money, as is aforesaid. for this, that the time of the tender was not past by the death of the feoffor. Also it seemeth in such a

case

cale where the Feoffor dyeth before the day of payment if the Executors of the Feoffor tender the mony to the Feoffee at the day of payment, the tender is good enough. And if the Feoffee refuſe this, the heires of the Feoffor may enter, &c. And the cauſe is for this, that the Executors repreſent the perſon of the teſtator, &c.

And note well, that in all ſuch caſes of condition of payment of a certaine ſum in groſſe, touching lands or tenements, if lawfull tender be once refuſed, he that ought to pay the mony is therof quitted and clearely diſcharged for ever.

Alſo, if the Feoffee in Mortgage before the day of payment that ſhall be made unto him make his Executors and dye, and his heire enter into the land as he ought. It ſeemeth in this caſe that the Feoffor ought to pay the money at the day ſet to the Executors, and not to the heire of the Feoffee, for this, that the mony at the beginning belonged to the Feoffee in manner as a duty. And it ſhall be underſtood that the eſtate was made beauſe of the borrowing of the mony of the Feoffee, or becauſe of another duty, and for this the payment ſhall not be made to the heire of the Feoffee as it ſeemeth. But the words of the condition may be ſuch that the payment ſhall be made unto the heire, as if the condition were that the Feoffor pay to the Feoffee, or to his heires, ſuch a ſumme ſuch a day, &c. There after the death of the Feoffee (if he dye before the day limited) then the payment ought to be made to the heire at the day ſet, &c.

Alſo, in ſuch caſe of a Feoffment in Mortgage, a queſtion hath been demanded, in what place the Feoffor is bound to tender the money to the

Feoffee at the day set, &c. And some have said that upon the Land so holden in Mortgage, for this, that the condition is dependant upon the land, and they have said that if the feoffor be ready upon the land to pay the money at the feast or day set, and the Feoffee be not at that time there, that then the Feoffor is excluded and discharged of payment of the money, for this, that no default was in him But it seemeth to some men that the Law is contrary and the default is in him: for he is bound to seeke the Feoffee, if he be then at that time in any manner of place within the Realme of England. As if a man be bound in an Obligation of twenty pound upon condition indorsed upon the Obligation, that if he pay to him to whom the Obligation is made, at such a day ten pound, that then the Obligation of twenty pound shall loose his force and shall be holden for nought: In this case it behoveth him that made the Obligation to seeke him to whom the Obligation is made if he be within England, and at the day set to tender him the said ten pounds, &c. Or otherwise he forfeiteth the sum of twenty pounds comprised within the Obligation, and so it seemeth in the other case. &c. And though that some have said, that the condition is dependant upon the land yet this is not proved that the release of the condition to be performed, ought to be made upon the land &c. No more then if the condition were, that if the feoffor should doat such a day &c an especiall corporall service to the Feoffee. not naming the place where the corporall service should be done: In this case the Feoffor ought to do such corporall service at the day limited to the Feoffee, in whatsoever

ther place in England that the Feoffee be, if he will have advantage of the condition &c And ſo it ſeemeth in that other caſe. And it ſeemeth to them that it ſhall be more properly ſaid that the eſtate of the land is dependant upon the condition &c. then to ſay that the condition is dependant upon the land But inquire, &c.

But if a Feoffement in fee be made reſerving to the Feoffor an annuall rent, and for default of payment a reentry &c In this caſe it needeth not to the tenant to tender the rent when it is behind but onely upon the land for this that this is a rent going out of the Land, which is not ſeiſt For if the feoffor be once ſeiſed of his rent, and after he commeth upon the Land &c and the rent is denyed him &c. he may have an Aſſiſe of Novel diſſeiſin, for though he may enter, becauſe of the condition broken, yet he may chuſe, that is to ſay to enter, or to have an Aſſiſe And ſo is there diverſity, as to the tender of the rent, that is going out of the Land, and of tender of another ſum in groſſe, which is not going out of the Land. And therefore it ſhall be ſure and a good thing for them that will make ſuch Feoffement in Mortgage to put and ſet a ſpeciall place where the money ſhall be paid And the more ſpeciall that is put, the better it is for the Feoffor. As if A. enfeoffed B to have to him and to his heires upon ſuch condition, that if A. pay to B. in the feaſt of Saint Michael the Archangell next comming, in the Cathedrall Church of Saint Paul of London, within foure houres next before the houre of noone of the ſame feaſt at the rood loft of the Northdoore within the ſame Church, or any other

certaine place within the same Church: that t
it shall be lawfull to the aforesaid A. and to
heires to enter, &c. In such case he needeth not
seek the feoffee in any other place, but in the pl
comprised in the indenture, nor to be there
longer time then the time specified in the same
denture, for to render or pay the money to
feoffee.

Also, in such case where the place of pay
is limited, the feoffee is not bound to receive
payment in none other place but in the place
limited: But yet if he receive the payment in
other place, that is good enough, and as stro
for the feoffor, as if the receit had been in the pl
so limited, &c.

Also, in this case of feoffement in Mortgag
if the feoffor pay the feoffee an horse, or a cup
silver or a ring of gold or any other such thing
full satisfaction of the money, and the other th
receiveth, this is good enough and as strong as
he had received the sum of mony, though the ho
or any of the other things be not the twentie
part worth in value of the sum of mony, for thi
that the other hath accepted in plaine and full s
tisfaction.

Also, if a man enfeoffe another in fee up
condition, that he and his heires shall yeeld to
stranger and his heires a yearely rent of twen
shillings, and if he and his heires faile of pay
ment of this, that then it shall be lawfull to th
Feoffor and to his heires to enter, this is a goo
condition: And yet in this case, though such
yearly rent be called an annual rent, [this is no
properly a rent: for if it shal be rent, it ought to b
rent service, rent charge, or rent seck, and it is
no

none of them; for if the ſtranger were ſeiſed of this, and after it were to him demy'd, he ſhall never have an Aſſiſe of this, for this that it iſſueth not out of any lands, and ſo the ſtranger hath no remedy, if any ſuch yearly payment be behind in this caſe, but that the feoffor and his heires may enter, &c. and yet if the feoffee and his heires enter for default of payment, then ſuch rent is gone for ever. And ſo ſuch rent is but a payment ſet to the tenant and to his heires, that if they will not pay this after the forme of the indenture, that they ſhall loſe their land by the entry of the feoffor or his heires, for default of payment. And in this caſe it ſeemeth that the feoffee and his heires ought to ſeeke the ſtranger and his heires, if they be in England, becauſe that no place is limited where the payment ſhall be made, and becauſe that ſuch rent is not going out of any land, &c.

And here note well two things, one is, that no rent that is properly ſaid rent, may be reſerved upon any feoffement, gift, or leaſe, but only to the Feoffor, or to the Donor, or to the leſſor, or to their heirs, and not in manner may be reſerved to any ſtrange perſon. But if two Joyntenants make a leaſe by deed indented, reſerving to the one a certain yearly rent, thats good enough to him to whom the rent is reſerved, for this, that he is privy to the leaſe, and not a ſtranger to this, &c. The ſecond thing is, that no entry, or reentry (which is all one) may be reſerved nor given to any perſon, but only to the Feoffor, or to the Donor, or to the Leſſor, or to their heires, and ſuch entry may not be aliened nor granted to any perſon. For if a man let land to another

for terme of life by indenture, yeelding to the Lessor and to his heires certaine rent, and for default of payment a reentry, &c if after the Lessor by a deed grant the reversion of the land to a nother in fee, and the tenant for terme of life attourneth, &c. if the rent after be behind the grantee of the reversion may distraine for the rent, for this, that the rent is incident to the reversion, but he may not enter into the land, and put out the Tenant as the Lessor might, or his heires, if the reversion had been continued in them, &c. And in this case the entry is taken away at all times for the grantee of the reversion may not enter, Causa qua supra. See Stat. 32. H 8, ca. 34. if the lease be by deed indented. And the Lessor nor his heires may not enter; for if the Lessor may enter, then he ought to be in his first estate &c. and that may not be, for this, that he hath put from him the reversion, &c.

Also, if there be Lord and tenant, and the tenant make such a lease for terme of life, yeelding to the lessor and to his heires, such yearly rent, and for default of payment a reentry, &c if after the Lessor dis without heire, during the estate of the tenant for terme of life, by which the reversion commeth to the Lord by way of Escheate, and after the rent of the tenant for terme of life is behind, the Lord may distraine the Tenant for the rent behinde, but he may not enter into the land by force of the condition, &c. for this, that he is not heire to the Feoffor &c.

Also, if land be granted to a man for terme of years upon condition, that if he pay to the grantor within two yeares forty markes, that then he shall have the land to him and to his heires, &c.

heires, &c. In this caſe if the grantee enter by force of the grant, & after he payeth to the grantor forty markes within the two yeares, yet he hath nothing in the Land, but for terme of two yeares, for this that no livery of ſeiſin was to him made at the beginning; for if he had had franktenement and fee in this caſe, because he hath performed the condition, then ſhould he have franktenement by force of the firſt grant where no Livery of ſeiſin was made thereof, which ſhould be againſt reaſon, &c. But if the grantor had made livery of ſeiſin to the grantee by force of the grant then hath the grantee the franktenement and the Fee upon the performance of the ſame condition.

Alſo, if lands be granted to a man for terme of five yeares, upon condition that he pay to the grantor within the firſt two years forty marks, that then he ſhall have fee, or elſe but for terme of five yeares, and livery of ſeiſin is made to him by force of the grant: Now he hath fee ſimple conditionall &c. and if in this caſe the grantee pay not to the grantor the forty markes within the ſame two firſt yeares, then immediately after the ſame two yeares, the fee and the franktenement is, and ſhall be adjudged to the grantor for this, that the grantor may not after the two years incontinent enter upon the grantee, for this, that the grantee hath yet title by three yeares to have and occupy the land by force of the ſame grant. And ſo for this, that the condition on part of the grantee is broken, and the grantor may not enter, the Law ſhall put the Fee and Franktenement in the grantor: for if the grantee in this caſe make waſte,

then

then after the breaking of the condition, &c. and after the two yeares the grantor ſhall have his writ of waſte, and this is a good proofe that the reverſion is to him, &c. but in ſuch caſe the feoffments upon condition where the feoffor may enter lawfully for the condition broken, &c There the Feoffee hath the franktenement before the entry, &c.

Alſo if a Feoffement be made upon ſuch condition, that the Feoffee ſhall give the land to the Feoffor, and to the wife of the Feoffor, to have and to hold to them and to the heires of their two bodies ingendred, and for default of ſuch iſſue, to remaine to the right heires of the Feoffor: In this caſe if the husband dye living the wife, before eſtate in the taile made to him, then ought the Feoffee by the Law to make eſtate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to ſay, to let the Land to the wife for terme of life without impeachment of waſte, the remainder after her deceaſe to the heires ingendred of the body of her husband and hers, and for default of ſuch iſſue, the remainder to the right heires of the husband. And the cauſe why the Leaſe ſhall be made in this caſe to the woman ſole without impeachment of waſte, is for this, that the condition is, that the eſtate ſhall be made to the husband and his wife in taile. And if ſuch eſtate had been made in the life of the husband, then after the death of her husband ſhe hath eſtate in the tayle ſole, which eſtate is without impeachment of waſte: and ſo it is reaſon, that if after a man may make eſtate to the intent of the condition, &c. that he ſhall make

it, &c.

it, &c. thought that he cannot have eſtate in the taile as he might have had, if the gift in the tail had been made to the husband, and to her in the life of her husband, &c.

Alſo, in this caſe if the husband and the wife had iſſue and dye before the gift in the taile made unto them, &c. then ought the Feoffee to make eſtate to the iſſue, and to the heires of the Father and mother ingendred, and for default of ſuch iſſue, &c. the remainder to the right heire of the husband, &c. And the ſame Law is in other caſes ſemblable. And if ſuch a Feoffor will not make ſuch eſtate when he is reaſonably required by them that ought to have eſtate by force of the condition, &c. then may the feoffor and his heires enter, &c.

Alſo, if a feoffment be made upon condition that the feoffee ſhall infeoff many men, to have and to hold, to them and to their heires for ever, and all they that ought to have eſtate, dye before any eſtate made unto them, then ought the feoffee to make the eſtate to the heirs of him that ſurviveth of them, to have and to hold to him, and to the heires of him that ſurviveth, &c.

Alſo, if a feoffement be made upon condition to enfeoffe another, or to give in the taile to another, &c. if the feoffee before the performing of the condition enfeoffe a ſtrange perſon or make a leaſe for terme of life, then may the feoffor and his heires enter, &c. for this, that he hath diſabled himſelfe to performe the condition, inſomuch that he made eſtate to another, &c. In ſuch manner it is, if the Feoffee before the condition performed, let the ſame Land to a ſtranger for terme of yeares: In this caſe the Feoffor or his

his heires may enter &c for this that the Feoffee hath disabled himselfe to make estate of the tenements according to that that was in the tenements when the estate thereof was made unto him. for if he will make estate according to the Condition &c then may the Feoffee for terme of yeares enter and put out him to whom the estate is made, &c and to occupy this during his terme. And many have said, that if such a feoffement be made to a man sole upon the same condition, and before that he hath performed the condition, he taketh a wife, then the Feoffor or his heire may incontinent enter, for this, that if he have made estate according to the condition and after dyeth, his wife shall be endowed and may recover her dowry by a writ of Dower, &c. And so by taking of a wife, the tenements be put in other plite then they were at the time of the feoffment upon condition, for this, that no such woman was dowable, nor should be endowed by the Law &c.

In the same manner it is if the Feoffor charge the land by his deed of rentcharge before the performing of the condition, or be bound in a statute Staple or Statute Merchant that in such cases, the Feoffor and his heires may enter, Cuius qua supra. For whosoever commeth to the tenements by the feoffement of the Feoffee, then the tenements must be lyable and put in execution by force of the Statute aforesaid. But when the Feoffor or his heires, for the causes aforesaid have entred so as they ought as it seemeth, &c. Then all such things that before such entry may trouble or incumber the tenements so given upon condition, as touching the same

tenements

tenements be utterly defeated &c.

Alſo, if a man make a deed of feoffement to another, and in the deed is no condition, &c. And when the Feoffor will make to him Livery of ſeiſin by force of the ſame deed he maketh livery of ſeiſin upon certaine conditions, &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deed, and the feoffement is of ſuch force, as if no ſuch deed had been thereof made, &c.

Alſo, if a feoffement be made upon ſuch condition, that the Feoffee ſhall not alien the land to any man, this condition is voyd, for this that when a man is inſeoffed in Lands or tenements, he hath power to alien them to ſome perſon by the Law. For if ſuch condition ſhould be good then the condition putteth him out of all the power that the Law giveth, which ſhould be againſt reaſon, and for this ſuch condition is voyd But if the condition be ſuch, that the Feoffee ſhall not alien to one ſuch, naming his name, or to any of his heires, or his iſſue, &c, or ſuch other like the which condition taketh not away all the power of alienation of the feoffee, &c. then ſuch condition is good.

Alſo, if tenements be given in the taile upon ſuch condition, that the tenant in the taile, nor his heires, &c ſhall not alien in fee, nor in tail, nor for terme of anothers life, but for their owne lives &c. ſuch alienation and condition is good: And the cauſe is for this, that when he maketh ſuch alienation and diſcontinuance he doth contrary to the intent, for which the Statute of Weſtminſter the ſecond was made by, which Eſtatute the eſtates in the taile bee ordained,

for

for it is proved by the words compriſed in the ſame Eſtatute, that the intent of the making of the ſame eſtatute was, that the will of the donor in ſuch caſes ſhould be obſerved. And when tenant in the taile maketh ſuch diſcontinuance, he doth the contrary to that, &c. And alſo in eſtates in the taile of any tenements, when the reverſion of the fee-ſimple is in another perſon, when ſuch diſcontinuance is made, then the fee ſimple in the reverſion, or the fee-ſimple in the remainder is diſcontinued, and for that that the tenant in the taile ſhall doe no ſuch thing againſt right, ſuch conditions are good, as is aforeſaid &c.

Alſo, a man may give land in the taile upon ſuch condition, that if the tenant in the taile or his heires, alien in fee, or in taile, or for terme of anothers life, &c. And alſo, that all the iſſues comming of the tenant in the taile be dead without iſſue, that then it ſhall be lawfull to the donor and to his heires to enter, &c. and by ſuch way the right of the taile may be ſaved after ſuch diſcontinuance to the iſſue in the taile if there be any, ſo that by way of entry of the donor or of his heires, the taile ſhall not be defeated by ſuch condition, and yet if the tenant in the taile in this caſe, or his heirs make any diſcontinuance, &c. he in the reverſion or his heires after this that the taile is determined for default of iſſue, &c. may enter into the land by force of the ſame condition, and ſhall not be driven to ſue a writ of Formedon in the reverter.

Alſo, a man may not plead in an action, that eſtate was made in fee, in the taile, or for terme of life upon condition, but if he vouch a record thereof,

thereof, or ſhew a writing under ſeale, proving the ſame condition, for it is a common erudition and learning, that a man by pleading ſhall not defeat any eſtate of franktenement by force of any ſuch condition, unleſſe he ſhew the proofe of ſuch condition in writing, &c. except it be in ſome ſpeciall caſe: but of chattels ſand reals, as of a leaſe made for terme of yeares, or of grants of wards made by Wardens in chivalry, and of ſuch other, &c. a man may plead that ſuch gifts or grants were made upon condition, &c. without ſhewing of any writing of condition. And in the ſame manner a man may do of gifts and grants of Chattels perſonals, and of contracts perſonals &c.

Alſo, though that a man in ſome action may not plead a condition that toucheth, and concerneth franktenement without ſhewing of writing thereof, as it is aforeſaid, yet a man may be holpen upon ſuch condition by the verdict of twelve men taken at large in Aſſiſe of diſſeiſin, or in ſome other Action where the Juſtices will take the verdict of the twelve Jurors at large. As put the caſe that a man ſeiſed of certaine land in Fee letteth the ſame land for terme of life without deed upon condition to yeeld to the Lord a certain rent, and for default of payment a reentry, or by force of which the leſſee is ſeiſed as of a franktenement, and after the rent is behind by which the Lord entreth into the land, and after the leſſee arraigneth an Aſſiſe of Novel diſſeiſin of the land againſt the Lord, the which pleadeth that he doth no wrong, ne no diſſeiſin, and upon this the Aſſiſe is taken.

In this caſe the Recognitors of the Aſſiſe

may

may ſay and yeeld to the Juſtices their verdict at large upon all the matter, as to ſay, that the defendant was ſeiſed, and ſo ſeiſed, let the ſame Land to the plaintife for terme of his life, to yeeld to the Lefſor ſuch annuall rent payable at ſuch a feaſt, and upon ſuch condition, that if the rent be behind at any ſuch feaſt that he ought to be payd, that then it ſhall be lawfull to the Lefſor to enter, &c. by force of which Leaſe the plaintife was ſeiſed of his demeine as of franktenement, and after the rent was behind at ſuch a feaſt, in ſuch a yeare, &c. for which the Lefſor entred into the land upon the poſſeſſion of the Leſſee, and prayeth the diſcretion of the Juſtices, if this be a diſſeiſin done by the plaintife or not. And then for this that it appeareth to the Juſtices, that this was no diſſeiſin done to the plaintife, inſomuch that, that the entry of the Lefſor was lawfull upon him, the Juſtices ought to give judgement that the plaintife ſhall take nothing by his writ of Aſſiſe. And ſo in ſuch caſe the Lefſor ſhall be holpen, and yet no writing was ever made of the condition, for as well as the Jurors may have knowledge of the leaſe, in the ſame manner may they have knowledge of the condition rehearſed in the leaſe. In the ſame manner it is of a feoffment in fee, or a gift in the taile upon condition though never writing were made thereof, &c. and as it is ſaid of a verdict at large in Aſſiſe, in the ſame manner it is of a Writ of Entre founded upon diſſeiſin, and in all other actions where the Juſtices will take a verdict at large, there where the verdict at large is made, the nature of the matter is put in the iſſue. Alſo in ſuch caſe where the Enqueſt may

ſay

say their verdict at large, if they will take upon them the knowledge of the law upon the matter, they may say their verdict generall, as it is put in their charge, as in case aforesaid they may well say that the Lessor disseised not the Lessee if they will, &c.

Also, in the same case, if the case were such, that after this that the Lessor hath entred for default of payment, &c. that the Lessee hath entred upon the Lessor, and him disseised. In this case if the Lessor arraigned an Assise against the lessee, the lessee may bar him of his Assise, for he may plead against him in bar, how the lessor that is plaintife made a lease to the defendant for terme of life, saving the reversion to the plaintife, the which is a good plea in bar, insomuch that hee knowledgeth the reversion to be to the plaintife, and in this case he hath no matter to help him, but the condition made upon the lease, and that he may not plead, for that he hath no writing and insomuch that he may not answer to the bar, he shall be barred. And so in this case he may see, that a man is seised and he shall have Assise, and yet if the lessee be plaintife, and the lessor defendant, he shall bar the lessee by verdict of the Assise. But in this case where the lessee is defendant, if he will not plead the said plea in bar, but plead no wrong ne disseisin, then the lessor shall recover by Assise, Causa qua supra.

And because such conditions be most commonly put and specified in deeds indented, some little thing shall be said here (to thee my son) of indentures, or of a deed Poll containing conditions, and it is to wit, that if the indenture be bipartite, or tripartite, or quadripartite, all the

parts of the Indenture be but one deed in the Law and every part of the Indenture is of himſelfe as of great force and effect, as all the parts together. And the making of Indentures is in two manners: One is to make them in the third perſon, another manner is to make them in the firſt perſon. The making of the third perſon is as in ſuch forme. This Indenture made between A. of B. of the one part, and C. of D. of the other part witneſſeth that the aforeſaid A. of B. hath given and granted, and by this preſent deed indented, hath confirmed to the aforeſaid C. of D. ſuch land, To have, &c. upon the condition, &c. In witneſſe whereof the parties beforeſaid interchangeably have put to their ſeales: Or elſe thus, In witneſſe whereof to the one party of this Indenture remaining with the ſaid C. of D. the aforeſaid A. of B. hath put to his ſeale, and to the other part of the ſaid Indenture remaining with the ſaid A. of B. the ſaid C. of D. hath put to his ſeale, given, &c. Such indentures are called Indentures made in the third perſon for this, that the verbs be in the third perſon, and ſuch forme of Indenture is the more ſure making, for that it is more commonly uſed. The making of indentures in the firſt perſon is of ſuch forme To all true Chriſtian people to whom this preſent writing indented ſhall come, A. of B. greeting in our Lord everlaſting. Know ye me to have given and granted, and by this my preſent deed indented to have confirmed to C. of D. ſuch land, &c. Or elſe thus: Know all men that be preſent, and them that be to come, that I. A. of B. have given and granted and by this my preſent deed indented have confirmed to

C. of

C. of D. ſuch land, &c. to have &c upon the condition following: In witneſſe whereof as well I. ſaid A of B as the aforeſaid C. of D. to theſe Indentures interchangeably hath put to our ſeales; or elſe thus: In witneſſe whereof to one part of this indenture I have put to my ſeale, and to the other part of the ſame Indenture the foreſaid C. of D hath put to his ſeal, &c.

And it ſeemeth that ſuch an indenture made in the firſt perſon, is as good in Law as the Indenture made in the third perſon, when both parties have thereto put their ſeales; for in the Indenture made in the third perſon, or in the firſt, perſon, if mention be made that the grantor hath ſet his ſeale only, and not the grantee, then is the Indenture only the deed of the grantor But where mention is made that the grantee hath ſet his Seale in the Indenture, &c. then is the Indenture as well the deed of the grantee, as the deed of the grantee, and thus it is the deed of both and alſo every part of the Indenture is the deed of both parties in ſuch caſe, &c.

Alſo if eſtate be made by Indenture to a man for terme of his life, the remainder to another in Fee upon condition, &c. And if the tenant for terme of life hath ſet his ſeale to one part of the Indenture, and after dyeth and he in the remainder, &c entreth by force of his remainder in this caſe he is holden to performe all the conditions compriſed within the Indenture as the tenant for terme of life ought to doe in his life, and yet he in the remainder never ſealed any part of the Indenture: But the cauſe is, that inſomuch that he entreth and agreeth to have the land by force of the Indenture, he is holden to per-

forme the condition within the Indenture, if hee will have the Land &c.

Also, if a Feoffment be made by deed Poll upon condition, &c. And for this that the condition is not performed, the Feoffor entreth and hath peth the possession of the deed Poll, and the feoffee bring an action of that entry against the feoffor, it hath been a question if the feoffor may plead the Condition, &c. By the deed Poll against the feoffee: And some have said nay, insomuch that it seemeth unto them, that a deed Poll, and the property of the same deed appertaineth to him to whom the deed is made, and not to him that made the deed, and insomuch that such a deed appertaineth not to the Feoffor, it seemeth to them that he may not plead this deed, &c. And others have said the contrary, and have shewed divers causes. One is, if the case be such that in the action between them the feoffee plead the same deed, and shew this to the Court: In this case insomuch that the deed is in the Court, the feoffor may shew in the Court, how in the deed bee divers conditions to be performed of the part of the feoffee, and for this that they be not performed, he entred &c. and thereto he shall be received: by the same reason when the feoffor hath the deed in hand, and sheweth it to the Court, he shall be wel received to plead of this, &c. and namely when the feoffor is privy to the deed. for he ought to be privy to the deed when he made the deed.

Also, if two men make or do a trespasse to another, the which releaseth to one of them by his deed all actions personals, and notwithstanding he sueth an action of trespasse against the other, the defendant may well shew that the trespasse was

was done by him and another his fellow, and that the plaintife by the deed that he shewed forth releaseth to his fellow all actions personals, and yet such deed appertaineth to his fellow and not unto him, but for this, that he may have advantage by the deed, if he will shew the deed to the Court, he may well plead, &c. Therefore by the same reason in the other case, when the feoffor ought to have advantage by the condition comprised within the deed Poll.

Also, if the feoffee gave or granted the deed Poll to the Feoffor, such grant shall be good, and then the deed, and the property of the deed appertaineth to the Feoffor. And when the feoffor hath the deed in hand, & pleaded it to the Court, it shall be rather understood that he came to the deed by a lawfull meane then by a tortious meane. And so it seemeth that he may well plead such a deed Poll, that comprehendeth condition, &c. if he have the deed in hand, &c. Ideo semper quære de dubiis, quia per rationes pervenitur ad legitum rationem.

Estates that men have upon Condition in the Law be such estates that have condition in the Law annexed to them, though it be not specified in writing, so as a man grant by his deed to another the office of a Parkership of a Parke, to have and to occupy the same office for terme of his life, the estate that he hath in the office, is upon condition in the Law, that is to say, that the Parker well and truly shall keep the Park, and do that that to the office appertaineth to doe: or otherwise that it shall bee lawfull to the grantor and to his heires to put him out, and to grant that to another if he will, &c. And

such condition as is understood by the Law to be annexed to something, is as strong as if the Condition were set or put in writing. In the same manner it is of grants of offices of Stewards, Constables Bedles, Bailiffs and other officers. But if such office be granted to a man to have and to occupy by him or by his deputy, then if the office be occupyed by him or by his deputy as it ought by the Law to be occupied this sufficeth for him or else the grantor or his heires may put him out as is aforesaid.

Also, estates of lands or tenements may be upon condition in the Law, though that upon the estate made, there was no rehearsall made of the condition: As put the case that a lease be made to the husband and his wife, to have and to hold to them during the coverture betweene them, in this case they have estate for terme of their two lives upon condition in the Law that is to say, if one of them die or if divorce be made betweene them that them it shall be lawfull to the Lessor, and his heires to enter &c. and that they have estate for terme of their two lives, it is proved thus: Every man that hath estate of franktenement in any lands or tenements, either he hath estate in fee, or in fee taile, or for terme of life, or for terme of anothers life, and yet by such lease they have franktenement, but they have not by the grant fee, or taile, or for terme of anothers life Ergo they have estate for terme of their two lives, but this is upon condition in the Law in forme aforesaid. And in this case if they make waste, the Lessor shall have against them a writ of waste, supposing by his writ Quod tenent ad terminum vitæ, &c. but in his

ples

plea he ſhall declare how, and in what manner the leaſe was made. In the ſame manner it is, if an Abbot make a leaſe to a man, to have and to hold during the time the Leſſor is Abbot: In this caſe the Leſſee hath eſtate for terme of his own life, but this is upon condition in Law, that is to ſay, if the Abbot die or reſigne, or be depoſed, it ſhall be lawfull to his ſucceſſors to enter, &c.

Alſo, a man may ſee in the Booke of Aſſiſes, An. 38. E. 3. a plea of aſſiſe in this forme that inſueth. Aſſiſe of Novel diſſeiſin was ſometime brought againſt one A. that pleadeth to the Aſſiſe, and was found by verdict that the anceſtor of the plaintife deviſed the tenements to be ſold by the defendant that was his executor to make diſtribution of the money for his ſoule. And it was found that a man after the death of the teſtator tendred him a certaine ſumme of money for the tenements, but not to the value, and that the executor after held the tenements in his owne hand by two yeares, to the intent to have ſold the tenements more dearer to ſome other: And it was found that he had all the while after taken the profits of the tenements to his own uſe, without any thing doing for the ſoule of the dead. Mombray, the executor in ſuch caſe is holden by the Law to make ſach ſale as ſoone as he may after the death of the teſtator, and it is found that he refuſed to make the ſale, and ſo the default was in him: And alſo by force of the deviſe he was holden to have put all the profits of the ſaid tenements to the uſe of the dead, and it is found that he hath taken them to his owne uſe, and ſo another default is in him, wherefore

it was adjudged that the plaintike ſhould recover, &c. And ſo it appeareth in the ſaid judgement, that by force of the ſaid devise the executor had none eſtate or power in the tenements. but upon condition in the Law &c. And in ſuch caſes it needeth not to have the word any deed, rehearſing the condition, &c Ex paucis dictis intendere plurima poſſis Moze ſhall be ſaid of conditions in the chapter of the deſcents that take away entry, and in the chapter of releaſes, and in the chap of Diſcontinuance.

Deſcents.

DEſcents that take away entries be in two manners, that is to ſay, where the deſcent is in fee, or in fee taile. Deſcent in fee that taketh away entry is, if a man ſeiſed of certaine lands or tenements, is diſſeiſed, and the diſſeiſor hath iſſue and dyeth of ſuch eſtate ſeiſed: Now the tenements deſcend to the iſſue of the diſſeiſor by courſe of the Law. as heire unto him And for this that the Law putteth the lands or tenements upon the iſſue and the iſſue commeth to the tenements by courſe of the Law, and not of his own deed, the entry of the diſſeiſee is taken away, and he is thereof put to his writ of Entre upon diſſeiſin againſt the heire of the diſſeiſor to recover the land.

Deſcent in the taile that taketh away entry is, if a man be diſſeiſed and the diſſeiſor giveth the ſame Land to another in the tayle, and the tenant in the tayle hath iſſue and dyeth ſeiſed of ſuch eſtate, and the iſſue entreth, in this caſe the entry of the diſſeiſee is taken away, and he is put

put to sue against the issue of the tenant in the taile a writ of entry upon disseisin, &c.

And note well that in such descents that take away entries, it behoveth that a man die seised in his demesne, as of fee, or of fee taile, for dying seised for term of life, or for term of anothers life, shall never take away the entry, &c.

Also, a descent of reversion, or of remainder, shall never take away entry, &c. so that in such cases that take away entries by force of descents it behoveth that he that dyed seised have fee and franktenement at the time of his dying or else such descent taketh not away entry.

Also, as it is said of descents that descend to the issue of him that dyeth seised, &c the same law is where they have no issue, but the tenements descend to the brother, or the sister, or to the uncle, or to some other cousin of him that dieth seised &c.

Also, if there be Lord and Tenant, and the Tenant be disseised, and the disseisor alieneth to another in fee, and the alinee dyeth without heir, and the Lord entreth as in his Escheate: In this case the disseisor may enter upon the Lord, for this, that the Lord cometh not to the land by descent, but by escheat

Also, if a man seised of certain land in fee, or in fee taile, upon condition to yeild certain rent or upon other condition, though that such tenant seised in fee, or in fee taile, die seised, yet if the condition be broken in their life, or after their decease, &c. this taketh not away the entry of the feoffor, nor of the donor, or of their heires, for this that the tenancy is charged with the condition, and the estate of the tenancy is conditionall

tionall in whose hands soever the tenancy shall come, &c.

Also, if such a tenant upon condition be disseised, and the disseisor die thereof seised, and the land descendeth to the heire of the disseisor, now the entry of the tenant upon condition that was disseised is taken away, but if the condition be broken, &c. then may the feoffor or the donor that made the estate or their heires enter, &c. Causa qua supra.

Also, if a disseisor die seised, and his heire enter, &c. the which endoweth the wife of the disseisor of the third part of the tenements: in this case, as to the third that is assigned to the wife in dower, incontinent anon after that the wife entreth and have possession of the same third part, the disseisee may lawfully enter upon the possession of the wife in the same third part. And the cause is for this, that when the wife hath her dower she shall be adjudged in rather immediately by her husband then by the heire, and so as to the franktenement of the same third part, the descent is forfeited And so ye may see how before the dowment the disseisee might not enter into any part, &c. and after the dowment he may enter upon the wife, and yet he may not enter upon the other two parts that the heir of the disseisor hath by descent, &c.

Also, if a woman be disseised of Land in Fee, whereof I have right and title to enter, if the woman take an Husband and have issue between them, and after the wife dyeth seised, and after the husband dyeth, and the issue entreth, &c. in this case I may enter upon the possession of the issue, for this, that the issue commeth not to the

the tenements immediately by descent after the death of his mother An. 9. H 7. fol. 24 it is holden contrary.

Also, if a disseisor infeoffe his father, and the father entreth and dyeth of such estate seised, by which the tenements descend to the disseisor as to the son and heire &c. In this case the disseisee may well enter upon the disseisor, notwithstanding the descent, for this, that as to the disseisin, the disseisor shall be adjudged in but as the disseisor notwithstanding the descent.

Also if a man seised of certaine Land in his demeane as of fee hath issue two sons and dyeth, and the younger son entreth by abatement in the Land, the which hath issue, and of this dyeth seised, and the tenements descend to the issue, and the issue entreth into the Land: In this case the elder son or his heires may enter by the Law upon the issue of the younger son, notwithstanding the descent, for this, that when the younger son abated in the land after the death of his Father, before any entry of the elder, the Law entende h that he entreth in claiming as heire unto his father, and for this that the elder brother claimeth by the same title, that is to say, as heire unto his father he and his heires may enter upon the issue of the younger brother, notwithstanding the descent, &c. for this that they claime by one selfe title. And in the same manner it shall be if there be many descents from one issue to another issue, of the younger son, &c. But in such case if the Father were seised of certaine land in fee, and hath issue two sons and dyeth, and the elder son entreth, and is seised, &c. And after the younger son disseiseth him, by which disseisin he is seised of

of Fee, and hath issue, and of such estate dyeth seised, then the elder brother may not enter, but is put to his writ of Entre upon disseisin for to recover the Land. And the cause is for this, that the younger brother commeth to the tenements by wrong disseisin made unto his elder brother, and for that wrong the Law may not intend that he claimeth as heire to his father, no more than if a strange person had disseised the elder brother that never had any title, &c. And so may ye see the diversity where the younger brother entreth after the death of his father, before any entry made by the elder brother in such case, &c. and where the elder brother entreth after the death of his father and is disseised by the younger brother &c. In the same manner if a man seised of certaine land in Fee hath issue two daughters, and dyeth, and the elder daughter entreth in the land claiming all the land to her, and thereof only taketh the profits and hath issue and dyeth seised by which her issue entreth, which issue hath issue and dyeth seised and the second issue entreth, &c. & haultra, yet the younger daughter and her issue, as to the halfe may enter upon every issue of the elder daughter, notwithstanding such descent, for this, that they claime by one selfe title &c. But in such case if both two sisters come into the Land to enter after the death of their father and thereof were seised, and after the elder sister thereof disseised the younger sister of that that to her belongeth, and thereof is seised in fee, and hath issue, and of such estate dyeth seised, by which the tenements descend to the issue of the elder sister, then the younger sister or his heires may not enter &c. Causa qua supra.

Also

Also, if a man seised of certains land hath issue two sons, and the elder brother is bastard, and the younger brother Mulier, and the father dyeth, and the bastard entreth and claimeth as heire unto his father and occupieth the land all his life without any entry made upon him by the Mulier, and the bastard hath issue and dyeth of such estate seised in fee and the land descendeth to his issue and his issue entreth, &c. in this case the Mulier is without remedy, for he may not enter, nor he shall have no action for to recover the Land, for this, that it is an ancient law in such case used. But it hath been an opinion of some men, that that shall be understood where the father hath a sonne a bastard by a woman, and after he weddeth the same woman, and after the Espousals he hath issue by the same woman a son or a daughter Mulier, and the Father dyeth &c. if such a Bastard enter, &c. and hath issue, and dyeth seised &c. Then shall the issue of such a Bastard have the land clearely to him, as it is aforesaid, &c and not any other Bastard borne of the Mother that was not espoused to his Father, and this is good and reasonable opinion: For such a Bastard borne before the Espousals solemnized between his Father and his Mother by the Law of the holy Church is Mulier, though that by the Law of the Land he is a Bastard borne, and so he hath colour of entry as heire to his Father, for this, that he is by one Law Mulier, that is to say by the Law of holy Church. But otherwise it is of a Bastard that hath no manner of colour to enter as heire, insomuch that he may not in no Law be said Mulier, &c. For such a Bastard is said

Quasi

Quaſi nullius filius. But in ſuch caſe aforeſaid where the baſtard entreth after the death of his father, and the Mulier putteth him out and after the Baſtard diſſeiſeth the Mulier and hath iſſue and dyeth ſeiſed and the iſſue entreth, then the Mulier may have a Writ of Entre upon diſſeiſin againſt the iſſue of the Baſtard and recover the land &c. And ſo may ye ſee the diverſity where ſuch a Baſtard continueth his poſſeſſion all his life without any interruption, and where the Mulier entreth and interrupteth the poſſeſſion of ſuch a Baſtard.

Alſo if a child within age hath title and cauſe to enter into any lands or tenements upon another that is ſeiſed infee, or in fee tatle of the ſame lands or tenements, if ſuch a man that is ſo ſeiſed die of ſuch eſtate ſo ſeiſed, and the tenements deſcend to his iſſue, during the time that the child is within age, ſuch deſcent ſhall not toll the entry of the child but he may enter upon the iſſue that is in by deſcent, &c for this that no laches ſhall be adjudged in a child within age in ſuch caſe &c.

Alſo, if the husband and the wife, as in right of the wife have title and right to enter in the tenements that another hath in fee or in fee tatle, and ſuch a tenant dyeth ſeiſed &c. In ſuch caſe the entry of the husband is taken away upon the heire that is in by deſcent. But if the husband die, then the wife may well enter upon the iſſue which is in by deſcent, for this that the laches of the husband ſhall not turn to his wife and to her heires in prejudice nor in damage in ſuch caſe, but that the wife and her heires may well enter where ſuch deſcent is during the coverture, &c.

Alſo,

Alſo, if a man that is not of whole minde, that is to ſay in Latine, Qui non eſt compos mentis, hath cauſe to enter in any ſuch Tenements, if ſuch deſcent ut ſupra be had in his life during the time that he was out of his mind, and after dye, his heires may well enter upon him that is in deſcent. And in this may ye ſee a caſe that the heire may enter, and yet his Anceſtor that had the ſame title may not enter, for he that was out of his minde at the time of ſuch deſcent, if he will enter after ſuch a deſcent, if an action upon this be ſued againſt him, he hath nothing for him to plead, or to help him but to ſay that he was out of minde at the time of ſuch deſcent, &c. And he ſhall not be received to ſay this, for this, that no man of full age ſhall be received in any plea by the Law to diſable his owne perſon. But the heire may well diſable the perſon of his Anceſtor for advantage of the heire in ſuch caſe, for this, that no laches may be adjudged by the Law in him that hath no diſcretion in ſuch caſe. And if ſuch a man out of his mind make a feoffement, &c. he may not enter, nor have a writ called Dum non fuit compos mentis, &c. Cauſa qua ſupra. But after his death his heire may well enter, or have the ſame writ, Dum non fuit compos mentis at his election &c.

Alſo, if I be diſſeiſed by a child within age that alieneth to another in fee, and the alienee dyeth ſeiſed, and the tenements deſcend to his heire, the child being within age, my entry is taken away. But if the child within age enter upon the heire that is in by deſcent, as he well may, for this, that the deſcent was during his nonage, then I may well enter upon the diſſeiſor, for this

this, that by his entry he hath defeated and annulled the descent.

And in the same manner it is, where I am disseised, and the disseisor maketh a feoffement in fee upon condition &c and the feoffee dyeth of such estate seised, &c. I may not enter upon the heire of the feoffee: But if the condition be broken, so that by such cause the feoffor entreth upon the heire, now may I well enter for this that when the feoffee or his heires enter for the condition broken the descent is utterly defeated.

Also if I be disseised, and the disseisor hath issue and entreth into Religion by force of which the Lands descend to his issue, in this case I may well enter upon the issue, and yet there was a descent: But, for this, that such descent commeth to the issue by the Fathers deed, that is to say, for this, that he entred into Religion, &c. and his descent commeth not to him by the deed of God, that is to say, by death, &c my entry is congeable and lawfull, for if I arraigne an Assise of Novel disseisin against my disseisor, though he after enter into religion, this shall not abate my writ: but my writ this notwithstanding shall abide in his force and strength, and my recovery against him shall be good By the same reason the descent that came to his issue by his own deed may not put me from my entry &c.

Also, if I let to a man certaine Lands for terme of twenty yeares, and another disseiseth me and putteth out the termor, and dyeth seised, and the Tenements descend upon his heire: I may not enter, and yet the Lessee for terme of yeares may well enter, for this, that by his entry he putteth not out the heire that is in by descent from

from the Frank tenement that unto him descended but only claimeth to him the tenements for terme of years, the which is no extinguishing of the Frank-tenement of the heir that is in by descent. But otherwise it is where my tenant for terme of life is disseised, &c. Causa qua supra.

Also, it is said that if a man be seised in tenements in fee by occupation in time of war, and dyeth thereof seised in time of war, and the tenements descend to his heire, such descent putteth out no man of his entry And of this a man may plead a plea in a writ of Ayel, An. 7 E. 2.

Also, that no dying seised (where all the tenements come to another by succession) shall take away the entry of any person &c For of Dukes, Abbots, Priors, Deanes, or Parsons of Churches, &c. though that there were twenty successors this putteth no man from his entry &c. More shall be said of descents in the chapter of Continuall claim, &c. See the Statute, 32. H. 8. c. 33.

Continual Claim.

COntinuall claime is, where a man hath right and title to enter in any lands or tenements whereof another is seised in fee or in fee taile if he that hath title to enter make continuall claime to the lands and tenements before the dying seised of him that holdeth the tenements: then though such a tenant dye thereof seised, and the lands and tenements descend to his heir, yet may he that hath made such claime or his heires, enter into the lands and tenements demanded, because of the continuall claime made,

notwithstanding such descent. As in case a man be disseised and the disseisee maketh continuall claime to the tenements in the life of the disseisor, though the disseisor dye seised in fee, and the land descendeth unto his heires, yet may the disseisee enter upon the possession of the heire, notwithstanding such descent.

In the same manner it is if a tenant for terme of life alien in fee, he in the reversion or he in the remainder may enter upon the alienee. And if such alienee dye seised of such estate without continuall claime made to the tenements before the dying seised of the alienee, and the tenements by cause of the dying seised of the alienee descend unto the heire of the alienee, then may not he in the reversion, nor he in the remainder enter. But if he in the reversion, or he in the remainder that hath cause to enter upon the alienee, made continuall claime to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life, &c.

Also, if lands be let unto a man for terme of his life, the remainder unto another for terme of life, the remainder unto the third in fee. If the tenant for terme of life alien to another in fee, and he in the remainder for terme of life make continuall claime unto the land before the dying seised of the alienee, and after the alienee dyeth, &c. and after he in the remainder for terme of life dyeth before any entry made by him: In this case he in the remainder in fee may enter upon the heire of the alienee because of continuall claime made by him that had the remainder for terme of life for this, that such right that he hath to enter

shall

shall goe and remaine to him in the remainder after him, insomuch that he in the remainder in fee may not enter upon the alienee in fee during the life of him in the remainder for terme of life, and because he might not make continuall claime, for none may make continuall claime but when hee hath title to enter. But it is to be shewed to thee my child, how, and in what manner continuall claime shall be made: and to learne this, three things there be to be understood. The first thing is, if a man have cause to have any lands or tenements in divers townes within one shire, if hee enter in any parcell of the lands or tenements that be in one town, in the name of all the lands or tenements to which he hath right to enter within all the townes of the same Shire, by such entry he hath as good possession and seisin of such lands and tenements whereof he hath title to enter, as if he had entred into every parcell, and this seemeth great reason. for if a man will infeoffe another without deed, of certain lands or tenements that he hath in many townes within one shire, and he will deliver seisin to the feoffee of a parcel of the tenements within one town in the name of all the lands and tenements that he hath in the same town, and in all the other townes, &c. all the said tenements, &c shall passe by force of the said livery of seisin unto him to whom such feoffement in such manner is made: And yet he to whom such livery of seisin is made hath no right to all the lands and tenements in all the townes, but by reason of the livery of seisin made of a parcell of the lands or tenements in one town, à multo fortiori, it seemeth good reason that when a man hath title to enter into Lands or

tenements in divers townes within one shire b
fore entry by him made, that by the entry of h
made in parcell of the tenements in one town,
the name of all the lands and tenements to t
which he hath title to enter within the same shi
this is seisin of all in him, and by such entry h
hath possession and seisin in deed, as if he had e
tred into every parcell, &c.

The second is to understand, that if a ma
hath title to enter into any lands or tenement
if he dare not enter in ithe same lands or ten
ments, nor in any parcell thereof for doubt
beating or for doubt of maiming, or for doubt
both, if he approach as nigh the tenements, a
he dare for such doubt, and claim by words the t
nements to be his incontinent by such claime h
hath a possession and seisin in the tenements, a
well as if he had entred indeed, though he ha
never possession and seisin of the same lands or te
nements before the said claime. And that the la
is such, it is well proved by a plea of an assise
the book of Assises, An. 38. E. 3. P. 23. the tenor o
which sueth in this forme.

In the County of Dorset before the Justice
it was found by verdict of Assise, that the plain
tife which had right by descent of heritage to hav
the tenements put in plaint at the time of th
death of his ancestor, which was dwelling in th
town where the tenements were, & by word clai
meth the tenements among his neighbours, bu
for doubt of death he durst not approach unt
the tenements, bringeth an assise, and upon th
matter found, it was awarded that he should re
cover.

The third thing is, to understand with
who

what time, and by what time the claime that is
said continuall claime shall serve & help him that
made the claime and his heire. And as to this it
is to wit, that he that hath title to enter, when
he will make his claime, if he dare approach un-
to the Land, then it behooveth him to go unto
the land, or to parcell of it, and make his claime.
And if he dare not approach unto the Land for
dread of beating, maiming, or death, then it be-
hooveth him to go and to approach as nigh as he
dare towards the land or parcell thereof and make
his claime. And if his adversary that occupieth
the land, die seised in fee, for in fee taile, within a
yeare and a day after such claime made, by which
the tenements descend unto his sonne, as heire
unto him, yet may he that made the claime, en-
ter upon the possession of the heire. But in this
case after the yeare and a day that such claime
was made, if none other claime be made, if the
father then dye seised the morrow after the yeare
and the day, or at another day after, &c. then may
not he that made the claime enter. And therefore
if he that made the claime will be sure alway that
his entry shall not be taken away by such de-
scent, it behooveth him within the yeare & the day
after the first claime, to make another claime, in
the forme aforesaid. And within the yeare and
the day after the second claime, to make the third
claime in the same manner, & within the yeare and
the day after the third claime to make another
claime, &c. that is to say, to make another claime
within every yeare & day next after every claim
made during the life of his adversary, and then
at what time that his adversary dye, his entry
shall not be taken away by descent. And such

claime made in such manner, is most commonly taken and called a continuall claime of him that made the claim But yet in case beforesaid when his adversary dyeth within the year and the day next after the first claime, this is in the law a continuall claime, insomuch that his adversary died within the year and day after the same claim, for it is no need for him that made the claime to make any other claime, but at what time he will within the same year and the day &c. Also if his adversary be disseised within the year and day after the claime, and the disseisor dieth thereof seised within the yeare and the day. &c This dying seised shall not hurt him that made the claime but that he may enter &c. For whosoever he be that dyed seised within a yeare and a day after such claim, that shall not hurt him that made the claim but that he may enter though there were many dyings seised, and many descents within the year and the day, &c.

Also, if a man be disseised, and the disseisor dye seised within the yeare and the day next after the disseisin done, whereby the tenements descend to his heire, in this case the entry of the disseisee is taken away, for the year and the day that should help the disseisee in such case, &c. shall not be taken from the time of the title of entry grown unto him, but only from the time of the claime by him made in manner aforesaid: and for that cause it shall be good for such a disseisee for to make his claime, &c. in as short time as he may after the disseisin, &c.

Also, if such a disseisor occupy the land by forty yeares without any claime made by the disseisee, &c. and the disseisee by little space before the death

deth of the diſſeiſor make claime in the forme aforeſaid, if ſo it fortune that within a yeare and a day after ſuch claime the diſſeiſor die diſſeiſed &c. the entry of the diſſeiſee is congeable and for this it ſhall be good for ſuch a man that made no claim that hath title to enter, &c. When he entreth that his adverſary lyeth ſick to make his claime, &c.

Alſo, as it is ſaid in the caſes put before where a man hath title to enter becauſe of a diſſeiſin &c. The ſame law is where a man hath right to enter becauſe of any other title, &c.

Alſo, in the ſaid Preſidents may ye know my child two things. One is. where a man hath title to enter upon any tenant in taile. if he make any ſuch claim unto the land &c. then is the ſtate of the taile defeated, for that claim is as an entry made by him. and is of the ſame effect in the Law, as if he were upon the ſame tenement. and had entred in the ſame tenements as is aforeſaid. And then when the tenant in taile immediately after ſuch claime continueth his occupation in the tenements, this is a diſſeiſin made of the ſame tenements unto him that made the claime, Et ſic per conſequens, the tenant then hath Fee ſimple

The ſecond thing is that as oft as he that hath right to enter maketh ſuch claime, and this notwithſtanding his adverſary continueth his occupation, &c ſo oft the adverſary doth wrong and diſſeiſin to him that made the claime. And for this cauſe ſo oft may he that made the ſame claime for every ſuch wrong and diſſeiſin made unto him, have a writ of treſpaſſe, Quare clauſum ſuum fregit, &c. to recover his damages, &c.

or he may have a writ upon the statute of King Richard the second made the fifth yeare of his raigne, supposing by his writ that his adversary hath entred into the lands or tenements of him that made the claim, where his entry was not given by the Law &c and by such action he shall recover his damages &c And if the case be such that the adversary occupy the tenements with force and armes or with a multitude of people at the time of such claime, &c. then may he that made claime, for every such time have a writ of forcible entry, and recover his treble damages.

Also, here it is to see, if the servant of a man that hath title of entry, may by the commandement of his Master make continuall claime for his Master in his name, and it seemeth that in some cases he might do this, for if he by his commandement come to any parcell of the Land and there maketh claime, &c in the name of his Master this claime is good for his Master, for this, that he hath done all that it behoveth his Master to do in such case &c

Also, if a Master say unto his servant that he dare not goe into the land, nor into any parcell of the land for to make any claims, &c. and dare not approach more nigh unto the same land save to such a place called Dale, and commandeth his servant to go to the same place of Dale, and there to make a claime for him, &c. if the servant do so, this seemeth as good claim for his Master, as if he had been there in his own person, for that the servant did all that his Master durst doe, and ought to do by the law in such case.

Also, if a man be so sick, or so lame that he may not

not in any manner come to the land, nor to any parcell of the same, or there if be a recluse that may not because of his order go out of his house &c if such a manner of person command his servant to go and make claime for him, &c and the servant dare not go to the land, nor do any parcel therof for doubt of beating, maime, or death; and for that cause such servant commeth as nigh to the land, as he dare for such dread and maketh his claime, &c for his Master it seemeth that such claime for his Master is good and strong in Law for else his Master should be in too great mischiefe for it may well be that such a person that is sick or lame or recluse, cannot find any servant that dare go unto the land, nor to any parcel of it to make the claim for him &c But if the Master of such servant be in good health and may and dare well to go to the tenements, or to the parcell of it to make his claime for him, &c if such a Master command his servant to go to some parcel of the land and make claime for him &c And when the servant is going to do the commandement of his Master, he heareth by the way such things that he dare not go to any parcell of the land for to make any claime for his Master, and for that cause he goeth as nigh unto the Land as he dare for doubt of death, and there he maketh claime for his Master in the name of his Master &c. It seemeth that the doubt in the law in such case shall be, if such claime availe his Master, or not; for this that the servant did not all that his Master at the time of commandement durst to have done.

Also, some have said, that where a man is in prison and is disseised, and the disseisor dyeth seised,

seised, during the time that the disseisee is in prison, by which the tenements descended to the heire of the disseisor, they have said that this shall not hurt the disseisee that is in prison, but that he may well enter notwithstanding such descent for this, that he may not make continuall claime when he was in prison. And also if such a one that is in prison be outlawed in an action of debt or trespass or in appeal of robbery &c he shall reverse such outlawry by writ of Error &c because he was in prison at the time of the outlawry against him pronounced.

Also if a recovery be had by default against such a one that is in prison, he shall avoid the judgements by a writ of Error, for this that he was in prison at the time of such default made, &c. and because that such matters of Record shall not hurt them that be in prison, but that it shall be reversed &c à multo fortiori, It seemeth that a matter indeed that is to say, such descent had when he was in prison shal not hurt him &c especially for this that he may not go out of prison to make continuall claim &c.

And in the same manner it seemeth to them where a man is out of the Realme in the Kings service for businesse of the Realme, if such a man be disseised when he is in the service of the King, that such descent shall not hurt the disseisee, but for this, that he might not make continual claim, &c. it seemeth unto them, that when he cometh again into England he may enter again upon the heire of the disseisor, &c For such a man shall reverse an outlawry that is pronounced against him during the time that he is in service &c. Ergo à multo fortiori he shall have aid by the Law in the other case, &c.

Also,

Also, others have said, that if a man be out of the Realme, though he be not in the Kings service, if such a man being out of the Realme bee disseised of Lands or Tenements within the Realme and the disseisor die seised, &c the disseisee being out of the Realm, it seemeth unto them, that when the disseisee commeth into the Realme, that he may well enter upon the heire of the disseisor, &c. and this seemeth unto them for two causes: One is, that he that is out of the Realm, may not have knowledge of the disseisin made unto him by understanding of the law, no more than that a thing done out of the Realme may be tried within this Realme by the oath of twelve men, and to compell such a man to make continuall claime, which by the understanding of the Law, can have no knowledge or Cognisance of such disseisin made or done, this shall be inconvenient, namely, when such a disseisin is done unto him, when he was out of the Realme, and the dying seised was done when he was out of the Realme. for in such case he may not by possibility after the common presumption make no continuall claime: But otherwise it shall be if the disseisee were within the Realme at the time of the disseisin, or at the time of the dying seised of the disseisor, &c. Another matter they alledge for a proofe, that before the stat. of King E. the third made the 34. yeare of his raigne, by which statute Nonclaime is out, &c the Law was such, that if a fine were levied of certaine lands or tenements, if any that was a stranger to the fine had right to have and to recover the same lands or tenements, if he came not and made his claim thereof within a year and a day next after

the

the fine levied, he shall be barred for ever, Qui dicebatur quod finis fine litibus imponebat. And that the Law was such, it is proved by the stat. of West. the 2. De donis conditionalibus, where it speaketh if the fine be levied of Tenements given in the taile, &c. Quod finis ipso jure sit nullus, nec habeant hæredes aut illi ad quos spectat reversio (licet plenæ ætatis fuerint, in Anglia, & extra prisonam) necesse apponere clameum suum. So it is proved, that if a stranger that hath right unto the tenements, if he were out of the Realm at the time of the fine levied, &c. shall have no damage, though that such fine was matter of record: by greater reason it seemeth unto them that a disseisin, and discent that matter in deed shall not so grieve him that was disseised when he was out of the Realm at the time of that disseisin, and also the time that the disseisor dyed seised, &c. but that he may well enter notwithstanding such discent. Also inquire if a man be disseised, and he arraign an assise against the disseisor, and the recognators of the assise chante for the plaintife, and the Justices of assise will be advised of their judgments until the next assise, &c. and in the meane season the disseisor dyeth seised, &c. yet the said suit of the assise shall be taken in law for the disseisee a continuall claim, insomuch that no default was in him, &c.

Also, inquire if an Abbot of a Monastery die, and during the time of a vacation, a man wrongfully entreth in certaine parcels of Land of the Monastery, claiming the Land unto him and his heires, and of that estate dyeth seised, and the land descendeth unto his heires, and after that an Abbot is chosen, and made Abbot of the Monastery,

Monaſtery, a queſtion is, if the Abbot may enter upon the heire or not. And it ſeemeth to ſome that the Abbot may well enter in this caſe, for this, that the Covent in time of vacation was no perſon able to make continuall claime, for no more then be they perſonable to ſue an action, no more be they perſonable to make continuall claim for the Covent is but a dead body without head, for in time of vacation a grant made unto them is void, and in this caſe an Abbot may not have a writ of *Entre* upon diſſeiſin againſt the heir, for this, that he was never diſſeiſed. And if the Abbot may not enter in this caſe, then he ſhall be put into his writ of right, which ſhall be hard for the houſe. But which it ſeemeth to them that the Abbot may well enter, &c.

Quæras de dubiis, Legem bene dicere ſi vis,
Quærere dat ſapere quæ ſunt legitima vere.

Releaſes.

RElеaſes be in divers manners, that is to ſay: Releaſe of right that a man hath in lands or tenements: and releaſe of actions reals and perſonals, and of other things. Releaſe of all the right that a man hath in lands or tenements, &c is commonly made in ſuch forme, or to ſuch effect. Noverint univerſi per præſentes me, A. B. remiſiſſe, relaxaſſe, & omnino de me & hæredibus meis quietum clamaſſe E. de D. totum jus, titulum, & clameum meum quæ habui habeo, vel quoviſmodo in futurum habere poſſo, de, & in uno meſſuag' cum prinn in P. And it is to be underſtood that theſe words Remiſiſſe & quietam

quietum clamasse (be of such effect as these words Relaxasse &c) and also these words which be commonly put in such deeds of releases &c that is to be understood, Quæ quoviſmodo in futurum habere poterit be as words boyd in the law, for no right passeth by a release, but the right that the releasor hath at the time of his release made: For if it be father, and son, and the father be disseised and the son living his father releaseth by his deed to the disseisor all the right that he hath, or may have in the same tenements, without clause of warrantize &c. and after the father dyeth the son may lawfully enter upon the possession of the disseisor, for this, that he had no right in the land living his father, but the right descended unto him by descent after the release made by the death of his father. Also, in a release of all the right that a man hath in certaine lands it behoodeth unto him to whom the release is made in such case, that he hath a Freehold in the lands in deed, or in the Law, at the time of the release made, for in every case where he to whom the release is made hath a Freehold in deed or in law at the time of the release made, &c. the release is good, Franktenement in law is, as if a man have disseised another, and thereof dye h seised by the which the tenements descend unto his son, howbeit that his son enter not in the tenements, yet he hath a franktenement in the law, which by force of the descent is cast upon him, and therefore the release made is good enough. And if he take a wife so being seised in the Law howbeit that he never enter in deed, and dyeth, his wife shall have thereof her dower. And in such case of release of all his right, howbeit that he to whom

whom the release is made, he hath any thing in the franktenement, neither in deed nor in Law, yet the release is good enough. As if the disseisor be let land that he had by disseisin to another for terme of his life, saving the reversion to him, if the disseisin or his heires release unto the disseisor all the right &c that release is good for that that he to whom the release is made, had in him a reversion at the time of the release made In the same manner if a lease be made to a man for terme of life, the remeinder unto another for term of life, the remainder unto the third in taile the remainder unto the fourth in fee if a stranger that hath the right unto the land release all his right to any of them in the remainder, such release is good for this, that every of them hath a remainder vested in himself: yet if the tenant for terme of life be disseised, and after he that hath right (the possession being in the disseisor) release unto one of them to whom the remainder was made all his right &c that release is voyd. for that that hee he had in him no remainder in deed, but all onely a right of remainder at the time of the release made.

And note that every release made to him that hath a reversion or remainder in deed shall serve and help them that have the franktenement as well as them to whom the release is made. if the tenant have the release in his hand, &c.

In the same manner a release made to a tenant for terme of life. or to a tenant in the taile, shall enure unto them in the reversion, or to them in the remainder, as well as to the tenant of the franktenement. and they shall have a great advantage of that, if that they may shew it.

And

And if there be lord and tenant and the tenant is diſſeiſed, and the lord releaſeth unto the diſſeiſee all the right that he hath in the ſeignory, or in the land, that releaſe is good, and the ſeignory is extinct. And if the goods of the diſſeiſee be taken, and of them the diſſeiſee ſueth a Replegiare againſt the Lord, he ſhall compell the Lord to avow upon him, and if he will avow upon the diſſeiſor, then upon the matter ſhewed, the avowry ſhall be abated, for the diſſeiſee is tenant to him in right, and in law.

Alſo, if land be given to a man in the taile, reſerving unto the donor and his heires a certain rent, if a donee be diſſeiſed, and after the donor releaſeth to the donee all the right that he hath in the land, and after the donor entreth into the Land, upon the diſſeiſor: in this caſe the rent is gone, for this, that the diſſeiſee at the time of the releaſe made was tenant in right and in law unto the donor, and the avowry of fine force ought to be made upon him by the donor of the rent behind, &c But yet nothing of the right of the land, that is to ſay, of the reverſion, ſhall paſſe by ſuch releaſe, for this, that the donee to whom the releaſe was made then had nothing in the land but only a right, and ſo the right of the land may not paſſe by ſuch releaſe to the donee.

In the ſame manner it is, if a leaſe be made to one for terme of life reſerving to the leſſor and to his heires certain rent, if the leſſee be diſſeiſed, and after the leſſor releaſeth to the leſſee and to his heires, and after the leſſee entreth, howbeit that in this caſe the rent is extinct, yet nothing of the right paſſeth, &c Cauſa qua ſupra. But if it bee very Lord, and very Tenant, and the tenant

nant maketh a feoffment in fee, the which feoffee never became tenant to the Lord, &c. if the Lord release to the feoffor all his right, &c. that release is void, for this that the feoffor hath no right in the land, and he is no tenant in right to the land but only tenant as for the dowry to be made, and he shall never compell the Lord to avow upon him, for the Lord may advow upon the feoffee if he will. Otherwise it is where the very tenant is disseised as in case aforesaid; for if the very tenant that is disseised holdeth of the Lord by knights service & dieth, his heire being within age, the Lord shall have and seise the ward of the heire. And so he shall have the ward of the feoffor that made the feoffment in fee and so it is a great diversity between the two cases.

Also, if a man enfeoffe another in his land upon trust, and upon the intent that he shall performe his last will, and the feoffor occupieth the same at the will of his Feoffees, and after the feoffees release by their deed unto the feoffor all the right, &c. This hath been in question if such release be good or not, and some have said that such release is void, for this, that no privity was between the Feoffees and their Feoffor, insomuch that no lease was made after such feoffement by their feoffees and their feoffor to hold at their will, &c. and some have said the contrary, and that for two causes. One is, that when such feoffments are made upon confidence to performe the will of the feoffor, that it shall be understood by the law, that the feoffor by and by ought to occupy the Land at the will of his Feoffees, and so it is such manner of privity between them as if a man make a feoffement to other persons,

and they incontinent upon the feoffment will a
and grant that the Feoffor ſhall occupy the lan
at their will, &c. Another cauſe they alledge, th
if ſuch land be worth forty ſhillings by year
&c. That ſuch feoffor ſhall be ſworne in A
ſiſes, and in other Inqueſts, in pleas reals, an
alſo in pleaes perſonals, of what great ſum
ſoever that the plaintifes will declare, &c. In
this is by the common Law of the Land: Erg
this is for a great cauſe, and the cauſe is that t
law will that ſuch feoffors and their heirs ough
to occuppy, &c. And to take thereof rent and a
the profits, and all manner of iſſues and rev
nues, &c. as though the tenements were the
own without interruption of the feoffees, not
withſtanding ſuch Feoffements, Ergo the ſam
law giveth a privity between ſuch feoffors, an
their feoffees upon confidence, &c. For whic
cauſes they have ſaid, that the releaſe made b
ſuch feoffees upon confidence to the feoffor, or t
his heires, &c. ſo occuppying the land, &c. ſhall b
good enough, &c. and this is the better opinio
as it ſeemeth. Quare ſince the ſtatute 27. H 8.
10. Alſo, releaſes after the matter in deed ſom
time have their effect by force to enlarge the eſta
of them to whom the releaſe is made: As if
let certaine land to a man for terme of yeares
by force wherof he is poſſeſſed, and I releaſ
unto him all the right that I have in the lan
without more words ſet or put in the deed, an
delivered unto him the deed: Then he hath eſta
but for terme of his life, and the cauſe is ſo
this, that when the Reverſion or the remainde
is in a man the which will enlarge by his releaſ
the eſtate of the tenant, &c. he ſhall have no gre
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ter eſtate but in the manner and forme as if ſuch a Leſſor were ſeiſed in fee, and will by his deed make eſtate to one in a certaine formes, &c. and deliver unto him ſeiſin by force of the ſame deed, if in ſuch deed of Feoffment there be no word of Inheritance, &c. Then he hath eſtate but for terme of life, &c. and ſo it is in ſuch releaſe made by him in the Reverſion, or in the Remainder: for if I let land to a man for terme of life, and after I releaſe unto him all my right without more ſaying in the releaſe, his eſtate is not enlarged. But if I releaſe unto him and to his heirs of his body engendred, then he hath fee taile. And if I releaſe unto him and to his heires, then hath he fee ſimple. So it behooveth in ſuch caſe to ſpecifie in the deed, what eſtate he to whom the releaſe was made ſhall have, &c. And ſometime a releaſe ſhall enure to ſet and put the right of him that maketh the releaſe to him to whome the releaſe is made: As a man is diſſeiſed, and he releaſeth to the Diſſeiſor all the right that he hath, In this caſe the diſſeiſor hath his right, ſo that where his before eſtate was wrong, now by the releaſe it is lawful & right. But note well: that when a man is ſeiſed in fee ſimple of any lands or tenements, & another will releaſe unto him all the right that he hath in the ſame tenements, it needeth not to ſpeak of the heirs of him to whom the releaſe is made, for this, that he had fee ſimple at the time of the releaſe made: for if the releaſe were made to him and to his heires for one day, or for one houre, it ſhall be as ſtrong unto him in the Law, as if had releaſed to him and to his heires, for when his right was gone from him at one time

by his releaſe without any condition, &c. to him that had fee ſimple, it is gone for ever. But where a man hath a reverſion or a remainder in fee ſimple at the time of the releaſe made, then if he will releaſe to the tenant for terme of yeares, or for terme of life, or in the taile it behooveth to determine the eſtate that he to whom the releaſe is made, ſhall have by force of the ſame releaſe. For this, that ſuch releaſe goeth to enlargeth eſtate, &c. of him to whom the releaſe is made: but otherwiſe it is where a man hath but right unto the Land, & had nothing in the reverſion, nor in the remainder in deed: For if ſuch man releaſe all his right to one that is tenant of the franktenement, all his right is gone, though that no mention be made of the heires of him to whom the releaſe is made. For if I let land to a man for terme of life, if I after releaſe unto to him for to enlarge his eſtate, either it behoveth that I releaſe unto him and to his heires of his body ingendred, or to him and to his heires males of his body begotten, or by ſuch ſemblable eſtate, &c or otherwiſe he hath no greater eſtate then he had before. But if my tenant for terme of life, let the ſame land out to another for terme of the life of the Leſſee, the remainder to another in fee, now if I releaſe unto him unto whom my tenant letteth for terme of life, I ſhall be barred for ever, though that no mention be made of his heires for this, that at the time of the releaſe made I had no reverſion, but only a right to have the reverſion: For by ſuch a leaſe with a remainder over that my tenant made, in this caſe my reverſion is diſcontinued, and ſuch a releaſe ſhall enure unto him in the re-

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mainder to have advantage of this, as well as to
the tenant for term of life, for to that intent the
mant for terme of life, and he in the remainder
as one tenant in the Law, and be as if one
mant were ſole ſeiſed in his demeſne as of fee
the time of ſuch releaſe made unto him. Alſo,
if a man be diſſeiſed by two, if he releaſe to one of
them he ſhall hold his fellow out of the land, and
by ſuch releaſe ſhall ſole have poſſeſſion & eſtate
in the Land. But if one diſſeiſor infeoffe two in
fee, and the diſſeiſee releaſe to one of them, this
ſhall enure to both the ſaid feoffees. And the cauſe
of the diverſity betweene theſe two caſes, is ap-
parant enough.

Alſo, if I be diſſeiſed, and the diſſeiſor is diſ-
ſeiſed, if I releaſe to the diſſeiſor of my diſſei-
ſin, my diſſeiſor ſhall never have action nor en-
ter upon his diſſeiſor, for this, that his diſſeiſor
hath my right by my releaſe, &c. And ſo it
commeth in this caſe, that if there were twenty
diſſeiſors each after other, and I releaſe to the
laſt diſſeiſor, he ſhall bar all the other of their
actions and their title. And the cauſe is, as it
commeth for this, and in many caſes when a man
hath a lawfull title to enter, though he enter not
yet, he ſhall defeat all meane titles by his releaſe
made. But this is not in every caſe, as ſhall be ſaid
afterward.

Alſo, if a man be diſſeiſed, the which hath a
ſon within age, and dyeth, and being the ſon
within age, the diſſeiſor dieth ſeiſed, and the land
deſcendeth to the heire, and a ſtranger abateth, &
after the ſon of the diſſeiſee when he commeth
into full age releaſeth all his right, &c. to the
abator: In this caſe the heire of the diſſeiſor

ſhall have no Aſſiſe of Mortdanceſtor againſt the abatoꝛ, but he ſhall be barred of the Aſſiſe, foꝛ this, that the abatoꝛ hath the right of the ſon of the diſſeiſee by his releaſe, and the entry of the ſon was lawfull, &c foꝛ this, that he was within age at the time of the deſcent, &c, But if a man be diſſeiſed, and the diſſeiſoꝛ maketh a feoffment upon condition, that is to ſay, to yeeld unto him certain rent, and foꝛ default of payment a reentry, &c. if the diſſeiſee releaſe to the feoffee upon condition, yet this amendeth not the eſtate of feoffee upon condition, foꝛ notwithſtanding ſuch releaſe, yet his eſtate is upon condition as it was befoꝛe. In the ſame manner it is where a man is diſſeiſed of certaine land, and the diſſeiſoꝛ granteth a rent charge out of the ſame land though that after the diſſeiſee releaſeth unto the diſſeiſoꝛ, &c. yet the rent charge abideth in his foꝛce: And the cauſe is in theſe two caſes, that a man ſhall have no advantage by ſuch releaſe that ſhall be againſt his owen proper acceptance, and againſt his owen grant. And though that ſome have ſaid, that where the entry of a man is congeable upon a tenant, if he releaſe to the ſame tenant, that this availeth upon the tenant, ſo as he had entred upon the tenant, and after infeoffed him, &c. this is not true in every caſe, foꝛ in the firſt caſe of theſe two caſes, if the diſſeiſee in fee enter upon the feoffee upon condition and after infeoffeth him, then the condition is all put aſide and void. And in the ſecond caſe if the diſſeiſee enter and enfeoffe him that granted the rent charge, then is the rent charge avoided. But it is not avoided by any ſuch releaſe without entry made, &c.

Alſo,

Alſo, if a man be diſſeiſed by a child within age, which alieneth in fee, and the alienee dyeth ſeiſed, and his heire entreth (being the diſſeiſor within age) now it is in the election of the diſſeiſee to have a writ of Dum fuit infra ætatem, or a writ of right againſt the heire of the alienee, and which writ ſoever he taketh of them, he ought to recover by the Law. And alſo he may enter into the land without any recovery, and in this caſe the entry of the diſſeiſee is taken away: but in this caſe if the diſſeiſee releaſe his right to the heire of the alienee, and after the diſſeiſor bringeth a writ of Right againſt the heire of the alienee, and he ioyneth the miſe upon the cleer right, &c. the grand Aſſiſe ought by the Law to find that the tenant hath more cleare right, &c. than hath the diſſeiſor, for this, that the tenant hath the right of the diſſeiſee by his releaſe, which is more ancient and more cleer right then the right of the diſſeiſor, for by ſuch releaſe, all the right of the diſſeiſee paſſeth unto the tenant, and is in the tenant. And to this ſome have ſaid, that in ſuch caſe where a man hath right to lands or tenements (but his entry is not lawfull) if he releaſe unto the tenant, &c. then ſuch releaſe ſhall enure by way of extinguiſhment. And unto this it may be ſaid that this is truth unto him that releaſeth, for by this releaſe he hath diſmiſſed himſelfe cleane of his right as to his perſon. But yet the right that he had may well paſſe and goe unto the tenant by his releaſe, for it ſhould be inconvenient that ſuch an ancient right ſhould be extinct all utterly, &c. for it is commonly ſaid, that right may not dye. But a releaſe that goeth by way of extinguiſhment againſt all perſons,

is where he to whom the releaſe is made, may not have this that to him is releaſed. As if there be Lord and tenant, and the Lord releaſeth unto the tenant all the right he hath in the Lordſhip or all the right he hath in the land &c. ſuch a releaſe goeth by way of extinguiſhment againſt all perſons, for this that the tenant may not have the ſame of himſelf. In the ſame manner is a releaſe made to the tenant of land of a rent charge or of a common of paſture, for this, that the tenant may not have that that unto him is releaſed, &c. So ſuch releaſes go away by extinguiſhment againſt all perſons.

Alſo to prove that the grand aſſiſe ought to paſſe for the demandant in the caſe aforeſaid I have heard often in the lecture upon the ſtatute of Weſt. the 2. that beginneth, in caſu quando vir amiſerit per defalt tenementum quod fuit jus uxor' ſuæ, &c. that at the common law before that ſtatute, if a leaſe were made to a tenant for terme of life, the remainder over in fee and a ſtranger by a fained action recover againſt the tenant for terme of life by default, and after the tenant dyeth he in the remainder hath no remedy before the ſtatute, for this, that he had no poſſeſſion of the land, but if he in the remainder had entred upon the tenant for terme of life, and diſſeiſed him, and after the tenant entreth upon him, and after the tenant for terme of life leaſeth by ſuch recovery had by default, and dyeth: now he in the remainder may well have a writ of right againſt him that recovered, for this, that the miſe ſhall be joyned onely upon the cleer right. And yet in this caſe the ſeiſin of him in the remainder was defeated by the entry of the tenant for terme of life.

life. But peradventure ſome will argue and ſay, that he ſhall have no writ of right in this caſe, for this, that when the miſe is joyned in ſuch manner, that is to ſay, if the tenant have more cleare right to the land in the manner as it is holden, then the demandant hath in the manner as he demandeth. And for this that the ſeiſin of the demandant was defeated by the entry of the tenant for terme of life, then he hath no right in manner as he demandeth. Unto this it may be ſaid that thoſe words (Modo & forma prout, &c.) in many caſes be words of the manner of pleading, and no words of ſubſtance: For if a man bring a writ of Entre (In caſu proviſo) of alienation made by the tenant in dower to his diſinheritance, and pleadeth of the alienation made in fee, and the tenant ſaith that he alened not in the manner as the demandant hath declared, and upon this they be at iſſue, and it is found by verdict that the tenant alened in the taile, or for terme of anothers life, the demandant ſhall recover, and yet the alienation was not in the manner as the demandant hath declared.

Alſo, if there be Lord and tenant, and the tenant holdeth of the Lord by fealty only, and the Lord diſtraineth the tenant for rent, & the tenant bringeth a writ of treſpaſſe againſt his Lord for his cattell ſo taken, & the Lord pleadeth that the tenant holdeth of him by fealty & certain rent, & for the rent behind he came to diſtraine, &c & demandeth judgement of the writ brought againſt him, Quare vi & armis, &c. And the other ſaith that he holdeth not of him in the manner as he ſuppoſeth, & upon this they be now at iſſue, and it is found by verdict that he holdeth of him by

fealty

fealty tantum. In this caſe the writ ſhall abate and yet he held not of the Lord in the manner as the Lord hath ſaid, for the matter of the iſſue is whether the tenant holdeth of him or not: For if he hold of him, though the Lord diſtraine for other ſervices that he ought not have, yet ſuch a writ of treſpaſſe, Quare vi & armis, &c. lieth not againſt the Lord but ſhall abate.

Alſo, in a writ of treſpaſſe of beating, or of goods taken, if the defendant plead nonculpable in the manner as the plaintife ſuppoſeth, and it is found that the defendant is culpable in another Town, or at another day then the plaintife ſuppoſeth, yet he ſhall recover: And in many other caſes theſe words, that is to ſay, in the manner as the demandant or the plaintife hath ſuppoſed, be no matter of ſubſtance of the iſſue: for in a writ of right where the mile is joyned upon the cleare right, it is as much to ſay, and to ſuch effect, that is to wit, whether hath the more right, the tenant or the demandant to the thing ſo demanded, &c.

Alſo, if a man be diſſeiſed, & the diſſeiſor dyeth ſeiſed, &c. and his ſon & heir is in by deſcent, and the diſſeiſee entreth upon the heire of the diſſeiſor, the which entry is a diſſeiſin, &c. if the heir bring an Aſſiſe, or a writ of right againſt the diſſeiſee, he ſhall be barred: for this, that when the grand aſſiſe is ſworne, their oath is upon the cleare right, and not upon the poſſeſſion, &c. for if the heire of the diſſeiſor had brought an Aſſiſe of Novel diſſeiſin, or a writ of Entre in nature of aſſiſe, and recovered againſt the diſſeiſee, and ſued execution, yet may the diſſeiſee have a writ of Entre in the Per againſt him of the diſſeiſin made

unto

unto him by his father, or he may have against the heire a writ of right: But if the heire ought to recover against the disseisee in the case afore-said by a writ of right, then all his right shall be clearly gone, for this, that a finall judgement should be given against him, which should be against reason where the disseisee hath more clear right, &c.

And know ye my son, that in a writ of right after this that the four Knights be chosen in the grand assise, then there is no greater delay then in a writ of Formedon, after this that the parties be at issue, &c. and if the mise be joyned upon batter, then there is lesse delay.

Also, a release of all the right, &c. in some case is good, made unto him that is supposed tenant in the Law, though he have nothing in the tenements, as in a Præcipe quod reddat, if the tenant alien the land hanging the writ, & after the demandant releaseth to him all his right, that release is good, for this, that he is supposed to be tenant by the suit of the demandant, and yet he hath nothing in the land at the time of the release made. In the same manner it is in a Prec' quod reddat the tenant vouch, and the vouchee enter into the garranty, if after the demandant release to the vouchee all his right, &c. this is good enough, for this that the vouchee after this that he hath entred into the garranty, is tenant in law to the demandant.

Also, as to releases of actions reals, and actions personals, it is so, that some actions be mixt in the realty, and in the personalty, as if an action of Waste be sued against the tenant for terme of life, this Action is in the realty, for this, that the

the place wasted shall be recovered. And also it is in the personalty, for this, that the treble damage shall be recovered for the wrong and waste done by the tenant, and for this, in this Action a release of actions reals is a good plea in bar and so it is a release of actions personals.

In the same manner it is in Assise of Novel disseisin, for this, that it is mixt in the realty and in the personalty. But if such assise be arraigned against the disseisor, the tenant of the disseisor may plead a release of all actions personals for to bar the Assise, but not a release of actions reals, for none shall plead a release of actions reals in assise, but the tenants, &c.

Also, in such actions that ought to be sued against the tenant of the franktenement, if the tenant have a release of all actions reals of the demand antmade unto him before the writ purchased, and he pleadeth it, this is a good plea for the demandant to say that he that pleadeth that plea had nothing in the Franktenement at the time of the release made, for that he had no cause to have an action reall against him.

Also, in such case where a man may enter into lands or tenements, and may also have of this an action reall which is given unto him by the law against the tenant: if in this case the demandant releaseth to the tenant all manner action reals, yet this taketh not away the entry of the demandant, but the demandant may well enter, notwithstanding such release, for this, that nothing is released but the action, &c. In the same manner it is of things personals: As if a man wrongfully take my goods, if I release unto him all actions personals, yet I may by the law take

take my goods out of his possession.

Also, if I have cause to have a writ of Detinue of my goods against another, though that I release unto him all actions personals, yet I may take my goods out of his possession for this, that no right of goods is released to him but only the action, &c. Also, if a man be disseised and the Disseisor maketh a Feoffement unto divers persons to his use, and the disseisor continually taketh the profits, &c. and the disseisee releaseth unto him all actions reals, and after he sueth against him a writ of Entre in nature of assise, because of the statute, for this, that he taketh the profits: Inquire how the disseisor shall be holpen by the said release, for if he will plead the release generally, then the demandant may say that he had nothing in the franktenement at the time of the release made, and if he plead the release specially, then it behoveth him to knowledge a disseisin, & then may the demandant enter in the land, &c by his cognisance of the disseisin, &c. But peradventure by speciall pleading he may be barred of the action that he sueth, &c. though that the demandant may enter, &c

Also, if a man sue appeale of Felony of the death of his ancestor against another, though the appellant release unto the defendant all manner actions reals and personals, this shall not help the defendant, for this, that this appeal is not an action reall, insomuch that the appellant shall not recover any reality, nor such appeale is no action personal insomuch that the wrong was unto his Ancestor and unto him: but if he release to the defendant all manner of actions then it shall be a good bar to appeale. And so a

man

man may ſee that a releaſe of all manner of acti ons is better then a releaſe of actions reals, an perſonals, &c.

Alſo, in appeale of robbery, if the defendan will plead a releaſe of the appellant of all acti ons perſonals this ſeemeth no plea, for on actio of appeal where the appellant ſhall have judg ment of death, &c. is more high then an action per ſonall, and it is not properly ſaid an action per ſonall, and therefore if the defendant will hav the releaſe of the appellant to bar him of the ap peal, it behoveth him to have a releaſe of a'l man ner of Appeals, or a Releaſe of all manner o actions, as it ſeemeth, &c. But in Appeale o Mathem, a releaſe of all manner of actions per ſonals is a good plea in bar, for this, that in ſuch an action he ſhall recover but damages.

Alſo, if a man be outlawed in an action per ſonall by proces of the original, and bring a writ of Error, if he at whoſe ſuite he was outlawed will plead againſt him a releaſe of actions per ſonals, this ſeemeth no plea, for by the ſaid acti on he ſhal recover nothing in the perſonality, but all only to reverſe the outlawry: But a releaſe of a writ of Error ſhall be a good plea, &c.

Alſo, if a man recover debt or damage, and he releaſe to the defendant al manner of actions, yet he may lawfully ſue execution by Capias ad ſa tisfaciendum, or by Eligit, or by Fieri facias, for execution by ſuch writs my not be ſaid an acti on, but if after a yeare and a day the plaintife will ſue a Scire facias to have execution &c, then it ſeemeth a releaſe of all actions ſhall be a good plea in bar: But ſome have thought the contra ry, inſomuch that the writ of Scire facias is a

writ

writ of execution, and is to have execution. But insomuch that upon the same writ the defendant may plead divers matters after the judgement given to put him from execution, as outlawry, and divers other, &c. therefore it may well be said action, &c. and I trow that in a Scire facias out of a fine, a release of all manner of actions is a good plea in bar, but where a man hath recovered debt or damage, and it is accorded between them that the plaintife shall not sue execution, then is it otherwhile that the plaintife make a release to him of all manner of executions.

Also, if a man release to another all manner demands, this is the most best release that he to whom the release is made can have, and most shall enure to his advantage, for by such release of all manner of demands, all manner of actions reals and personals, and actions of appeales be gone and extinct, and all manner of executions be gone and extinct: and if a man hath title to enter in any lands or tenements, by such release his title is gone. And if a man have rent service, or rent charge, or common of pasture, &c. by such release of all manner demands to the tenant of the land, wherof the service, or the rent is going out, or in what land soever the common be the service and rent, and the common is gone and extinct, &c.

Also, if a man release to another all manner quarrels, or all controverses or debates between them, Inquire to what matter, and to what effect such words do extend.

Also, if a man be bound by his deed to another in a certain sum of mony to pay at the feast of Saint Michael then next following, &c. if the obligee

obligee before the ſaid feaſt releaſe to the obligor all actions, he ſhal be barred of the duty for ever and yet he might have no action at the time of the releaſe made. But if a man let land to another for terme of years, to yeeld at the feaſt of Saint Michael next enſuing forty ſhillings, and before the ſame feaſt he releaſeth to the leſſee all actions yet after the ſame feaſt he ſhall have an action of debt for the non-payment of the forty ſhillings notwithſtanding the ſaid releaſe. Study the cauſe of the diverſity between theſe two caſes.

Alſo where a man will ſue a writ of Right it behoveth that he plead of the ſeiſin of himſelf or of his anceſtors, and alſo that the ſeiſin was in time of the ſame King, as he pleadeth in his plea, for this is an ancient Law uſed as it appeareth by report of a certaine plea, in ſuch ſorme as inſueth. Sir I. Barrey brought a writ of right againſt Rainold Aſhlington, and demanded certaine tenements, &c. he miſe was joyned in the banke, and the originall and the proces were ſent before Juſt errants, where the parties came, and the 12. Knights were ſworne without challenge of the parties to be allowed, for this, that the election was made by aſſent of the parties, with the four Knights, and the oath was ſuch, that I ſhall ſay truth, &c whether B. of A. have more right to hold the tenements that I. Barrey demanded againſt him by his writ of Right, or John to have the tenements as he demandeth, and for nothing to let to ſay the truth, as God me help, &c without ſaying to their knowledg and ſuch oath ſhal be made in attaint and battell, and in waging of Law, for thoſe do bring every thing unto an end: but I. B. plea-

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ded of the diſſeiſin of one Ralph his anceſtor in the time of K. H. and Rainold upon the miſe joyned tendred halfe a marke for the time, &c. and upon this Herle luſt. ſaid to the grand aſſiſe, after that they were charged upon the cleare right: Goodmen Rainold gave half a marke to the K. for that time to the intent that if you find that the anceſtor of I. was not ſeiſed at the time that the demandant hath pleaded, you ſhall enquire no further upon the right: and for this ye ſhall ſay to us, whether the anceſtor of I. Ralph by name was ſeiſed in the time of K H. as he hath pleaded, or not: and if he find that he was not ſeiſed in the time yet ſhall enquire no more, and if ye find he was ſeiſed, then enquire further of the right: and after the grand aſſiſe came with their verdict, and ſaid that Ralph was not ſeiſed in the time of K H whereby it was awarded that Rainold ſhould hold the tenements againſt him demanded to him and to his heires quite of I. Berrey and his heires, to the remnant, and John in the mercy.

Confirmation.

A Deed of confirmation is moſt commonly in ſuch forme or to ſuch effect: Noverint universi, &c. me A. de B. ratificaſſe, & probaſſe, & confirmaſſ. C. de D. ſtū & poſſeſſionē quos habet, de & in uno meſſuage cum pertinent in N &c. And in ſome caſe a deed of confirmation is good and pleadable, where in the ſame caſe, a deed of releaſe is not good nor available As I let land to a man for terme of his life, the which letteth the ſame land to another for foure years, by force of the which he is poſſeſſed, if I by my deed confirme the ſtate of the tenant for term of years and the

tenant for terme of life dyeth during the term
yeares, I may not enter the land during the sa
terme, yet if I by my deed of releafe have rele
fed to the tenant for term of yeares in the life
the tenant for terme of life, the releafe fhall
void, for this, that then no pzivity was betwe
me and the tenant for term of years, for a r
leafe is not available to the tenant for terme
yeares, but where a pzivity is betweene him a
him that releaseth. In the fame manner it is if
be diffeifed, and the diffeifor make a leafe to an
ther for terme of years, if I releafe unto t
termor, it is void: but if I confirm that eftate
the termor, that is good and effectual. Alfo, if
be diffeifed, and I confirme the ftate of the d
feifor, then hath he a good and rightfull eftate
fee fimple though that in the deed of confirmati
no mention is made to his heires, for this, th
he had fee fimple at the time of the confirmation
for in fuch cafe if the diffeifee confirm the eft
of the diffeifor, to have and to hold to him f
terme of his life, yet the diffeifor hath fee fimpl
and is feifed in his demeine as of fee, for th
when his eftate was confirmed, he hath fee fi
pleand in fuch deed he may not change his eft
without entry upon him, &c. In the fame ma
ner it is, if the ftate be confirmed for terme o
day, or for terme of an houre he hath a good eft
in fee fimple, for this that his eftate in fee fimp
was once confirmed, for confirmare, idem
quod firmum facere.

Alfo, if two be diffeifors, and the diffeifee r
leaseth to the one, he fhall hold his fellow out
the land: But if the diffeifee confirm the eft
of one without more fpeech in the deed, fome fa
th

at he ſhall not hold his fellow out, but he ſhal
d joyntly with him, for that nothing was
firmed but his eſtate was joynt: and for this
e have ſaid, that if two joyntenants be, and
cone confirmeth the eſtate of the other, that
hath put a joynt eſtate as he had before. But
he have ſuch words in the deed of confirmati-
, to have and to hold to him and to his heires
the tenements whereof mention is made in
confirmation, then he hath eſtate ſole in the
tments, and therefore it is a good and a ſure
ng in every confirmation to have theſe words
have and to hold the tenements, &c. in fee, or in
tale, or for terme of life, or for terme of years
er, or as the cauſe or matter is: for to the in-
t of ſome, if a man let land to another for
me of life, and after he confirmeth his eſtate by
eſe words, to have and to hold his eſtate to
m and to his heires this confirmation as con-
ning his heires, is void, for his heires cannot
be his eſtate which was but for terme of life,
t if he confirm his eſtate by theſe words, to
e the ſame land to him and to his heires, this
firmation maketh fee ſimple in this caſe to
in the land, for this, that theſe words, to have
to hold, &c. goeth to the land, and not to the
ate that he hath, &c. Alſo, if I let certain land
a woman ſole for terme of her life, the which
eth a husband and after I confirm the eſtate
the husband and to the wife for term of their
o lives, in this caſe the husband holdeth not
ntly with the wife, but holdeth in the right of
s wife for terme of his life: but this confir-
tion ſhall enure to the husband by way of re-
inder for terme of his life, if he ſurvive his

wife. But if I let land to a woman sole f
terme of yeers, which taketh a husband and
ter I confirme the estate to the husband and
wife for terme of both their lives, in this c
they have joynt estate in the franktenement
of the land for this, that the wife had no fran
tenement before.

Also, if a parson of a Church charge the gl
of his Church by his deed, and the Patron a
the Ordinary confirme the same grant, and
this is comprised within ỹ same grant, the sa
grant shall be in his strength after the purp
of the same grant: but in such case it behove
that the patron have fee simple in the advowso
for if he have estate in the advowson for term
life, or in taile, then the grant shall stand b
during his life and the life of the parson t
granted it, &c.

Also if a man let land for terme of life, wh
tenant for terme of life chargeth the land with
rent in fee, and he in the reversion confirm
the same grant, this charge is good enough a
effectuall. And if there be a perpetuall chant
whereof the Ordinary hath nothing to med
nor to do, The Patron of the Chantry and
chaplaine of the same chantry may charge
chantry with a rent charge in perpetuity. B
in some case the verbs Dedi & Concessi, have
same effect in substance, & shal enure to the sa
intent as this verb confirmavi: as if I be
seised of a plough land, and after I make suc
deed &c. Sciant præsentes, &c. quod dedi to
disseisor the said plough land, &c And if I d
ver only the deed to him without livery of se
of the land, that is a good confirmation, and
stro

trong in the law, as if he had in the deed this verb confirmavi, &c.

Also, if I let land to a man for term of yeers by force of which he is possessed, & after I make him a deed, &c. quod dedi, vel concessi, &c. the same land, to have for terme of his life, and deliver him the deed, then by and by he hath estate in the land for terme of his life, and if I have in the deed, to have to him and to his heirs of his body ingendred, he hath estate in the taile, and if I say in the deed, to have and to hold to him and to his heires, he hath estate in a fee simple, for this shall enure to him by force of confirmation to inlarge his estate. Also if a man be disseised, and the disseisor dyeth seised, & his heir in by discent, after the disseisee and heir of the disseisor make joynture by a deed to another in fee, and livery of seisin upon this is made, as to the heir of the disseisor that inseals the deed, the tenements passe by the same deed by way of feoffment, and as to the disseisee that inscaleth the same deed, this shall not enure but by the way of confirmation: but if the disseisee in this case bring a writ of Entrie in the (Per and Cui) against the alience of the heire of the disseisor, inquire how he shall plead the deed against the demandant by way of confirmation, & know this mychild, that it is one of the most honourable, laudable, and profitable things in our Law, to have the conscience of well pleasing, in actions reals and personals and for this I counsel thee, especially to set thy courage and care to learn that.

Also if there be Lord and tenant, and the Lord confirmeth the estate that the Tenant hath in the tenements, yet the seignory wholly abideth

to the Lord as it was before. In the same manner it is if a man have a rent charge out of certaine land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same manner it is if a man have common of pasture in the land of any other, if he confirmeth the state of the tenant of the land, nothing shall depart from him of his common, but this notwithstanding the common abideth to his as it was before.

But if there be Lord and tenant, which holdeth of his Lord by service of fealty, and twenty shillings of rent, if the Lord by his deed confirm the estate of the tenant to hold by 12.d ſ d or by an ob. in this case the tenant is discharged of all other services, and shal yeeld nothing to the Lord but that that is comprised within the same confirmation yet if the Lord will by the deed of confirmation, that the tenant in this case ought to yeeld to him a Hawke, or a Rose yearly at such a feast &c. this reservation is voyd, for this that he reserveth to him a new thing that never was parcell of the services before the confirmation, and so the Lord may abridg the services by such confirmation, but he may not reserve to him a new service, &c.

Also, if there be Lord, Meine and Tenant, and the tenant is an Abbot that holdeth of the meine by certain services yearely, the which hath no cause to have acquittance against his meine for to bring a writ of Meine, &c. In this case if the meine confirme the estate that the Abbot hath in the land, to have and to hold the Land unto him and his successors in frankalmoigne or free almes, &c in this case this confirmation is good

and

and then the Abbot holdeth of the Meſne in frankalmoigne: and the cauſe is, or that no new ſervice is reſerved, for all the ſervices eſpecially ſpecified be extinct, and nothing is reſerved to the meſne, but the Abbot ſhall hold the land of him as it was before the confirmation, for he that holdeth in frankalmoigne ought to do no bodily ſervice, ſo that by ſuch confirmation it appeareth the meſne ſhal not reſerve unto him no new ſervice, but that the lands ſhall be holden of him as it was before, and in this caſe the Abbot ſhall have writ of meſne if he be diſtrained in his default by force of the ſaid confirmation, where percaſe he might not have ſuch a writ before.

Alſo, if I be ſeiſed of a villein as of a villein in groſſe, and another taketh him out of his poſſeſſion claiming him to be his villein, whereas he have no right to have him as his villein, and after I confirm the eſtate to him that he hath in my villeine, this confirmation ſeemeth void, for this, that none may have poſſeſſion of a man as of a villeine in groſſe, but he which hath right to have him as his villein in groſſe, and inſomuch that he to whom the confirmation was made, was not ſeiſed of him as of his villeine at the time of his confirmation, ſuch confirmation is void: but in this caſe if ſuch words were in the deed, Sciatis me dediſſe & confirmaſſe tali, &c. illem villenum meum, this is good, but this ſhall enure by force and way of grant, and not by way of confirmation, &c.

Alſo, ſometimes theſe verbs (Dedi & Conceſſi) enure by way of extinguiſhment of the thing given or granted. As a tenant holdeth of his Lord by certain rent, and the Lord by his deed

granteth to the tenant & to his heires the rent, & this shall enure to the tenant by way of extinguishment, for by this grant the rent is extinct. In the same manner it is, where one hath a rent charge of certain land and he granteth to the tenant of the land the rent charge, and the cause is for this, that it appeareth by the words of the grant, that the will of the donor is, that the tenant shall have the rent, insomuch that he may have no rent out of his own land, for this the deed shall be understood and taken for the most advantage and avayle of the tenant that it may be taken, and that is by way of extinguishment.

Also, if I let land to a man for term of yeres and after I confirme his estate without more words put in the deed, he hath no greater estate but for terme of years, as he had before: But if I release to him my right that I have in the land without moe words put in the deed, he hath estate of franktenement. And so maist thou my child understand great diversities between releases and confirmations. And if I be within age and let land to one for term of twenty yeers, and he granteth the land for terme of ten yeers, so that he granteth but parcell of the term. In this case when I am of full age if I release unto the grantee of the lessee, &c this release is void, for this, that there is no privity between him, and me. But if I confirme his estate then this confirmation is good: but if my lessee grant all his estate to another, then my release made to the grantee is good and effectuall.

Also, if a man grant a rent charge out of his land to another for term of his life, and after he confirmeth his estate in the same rent, to have & to

to hold to him in fee taile, or in fee simple. this confirmation is void, as to the enlarging of his estate, for this that he that confirmeth had no reuersion in the rent: but if a man be seised in fee of rent service, or of rent charge, and he granteth the rent to another for terme of life, and the tenant attourneth, & after he confirmeth the estate of the grantee in fee taile, or in fee simple, this confirmation is good as to inlarge his estate after the words of the deed of confirmation. for this, that he that confirmeth the estate at the time of the confirmation hath the reuersion of the rent &c. But in this case aforesaid, where a man grants a rent charge to another for terme of life, if hee will that the grantee shall have estate in the tail or in fee, him behoveth that the deed of the grant of the rent charge for term of life, be surrendred or cancelled, and then to make it a new deed of such a rent charge, to have and to take to the grantee in the taile or in fee, Ex paucis dictis intendere plurima possis.

Attournment.

ATtournment is, if there be Lord and Tenant, and the Lord will grant by his deed the service of his tenant to another for terme of years or for term of life, or in taile or in fee, it behoveth that the tenant attourn to the grantee in the life of the grantor by force vertue of ỹ grant, or otherwise the grant is voyd And attournment is no other thing in effect but when the tenant hath heard of the grant made by his Lord, that the same tenant by word agree to the said grant, as to say to the grantee, I agree me to the grant made to you, or I am well content of the grant made to you &c. But the more common

common attournment is to say, Sir, I attourn to you by force of the same grant, or I become your tenant, &c or to deliver to the grantee 1, d. ob or farthing by way of attournment, &c.

Also, if a man be seised of a mannor, which mannor is parcell in demeine, and parcell in service, if he will alien such a mannor to another, it behoveth that by force of the alienation all the tenants that hold of the alienor (as of this mannor, &c.) attourn to the Alience, or otherwise the services abide continually in the Alienor, except tenants at will for it needeth not that tenants at will attourn upon such alienation, &c. for this, that the s e lands or tenements that they hold at will d am sle to the alinee by force of such alienation. o pa

Also, if there be Lord and tenant, and the tenant letteth the tenements to a man for term of life, the remainder to another in fee, if the Lord grant the services to the tenant for terme of life in fee, in this case the tenant for term of life, hath fee in the services, but the services be put in suspence during his life, but his heires shall have the services after his death, and in that case it needeth not attournment, for by the acceptance of the deed of him that ought to attourn, this is attournment in it selfe, &c. but where the tenant hath as great and high estate in the tenements as the Lord hath in the seigniory, in such case if the Lord grant the service unto the tenant in fee, this enureth by way of extinguishment, Causa patet.

Also, if there be Lord and tenant, and the tenant maketh a lease to one for terme of life, saving the reversion unto him, if the Land grant

the

the seigniory to the tenant for terme of life in fee, in this case it behoveth that he in reversion attourn to the tenant for terme of life by force of the grant, or otherwise the grant is voyd for this that he in the reversion is tenant to the Lord.

Also, if there be Lord and tenant and the tenant holdeth of the Lord by twenty manner of services, and the Lord granteth his seigniory to another, if the tenant pay or do any of the services to the grantee, this is a good attournment, of and for the services, though that the tenants intent was to attourne but of the same parcell, for this, that the Seigniory is an whole thing, though that there be divers manner of services that the tenant ought to do.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by many manner of services, and the Lord granteth the services to another by fine, if the grantee sue a Sire facias out of the same fine, for any parcell of the services, and had judgement to recover, this judgement is a good attournment, in the Law for all the services.

Also, if the Lord of the rent granteth the services unto another, and the tenant attourneth by a peny, and after the grantee distraineth for rent behind & the tenant to him makes rescous: In this case the grantee shall have no assise of ỹ rent, but he shall have a writ of rescous, for that the gift of the penny was but by way of attournment. But if the tenant had given unto the grantee the said penny as parcell of the rent, or a halfe penny, or a farthing, by way of seisin of the rent, then this is a good attournment, and also it is a good seisin to the grantee of the rent,

and

and then upon such rescous the grantee shal hav
an assise, &c.

Also, if a man let Tenements for terme o
yeers, by force of which the lessee is seised, an
after the Lord granteth by his deed the reversi-
on to another for terme of life, or in tail or in fee,
it behooveth him in this case that the tenant for
terme of years attourne, or otherwise nothing
passeth to such grantee by such deed. And if in
this case the tenant for terme of years attourn
to the grantee, then by and by passeth the frank-
tenement to the grantee by such attournment,
without any livery of seisin &c. for this, if any
livery shall be made, or needeth to be made in such
case, then the tenant for terme of years shall bee
at the time of the livery of seisin out of his pos-
session, which should be against reason.

Also, if land be let to a man for terme of yers
the remainder to another for terme of life, reser-
ving to the lessor a certain rent for the year, and
livery of seisin is made upon this to the tenant
for terme of yeers if he in the reversion in such
case grant his reversion to another &c and the
tenant that is in the remainder after the term of
yeers attourneth, this is a good attournment, &
he to whom the reversion is granted, by force of
such attournment shall distrain the tenant for
terme of years for the rent due after such at-
tournment, though the tenant for term of yeres,
never attourned unto him, and the cause is for
that, where the reversion is dependant upon the
state of franktenement, it sufficeth that the te-
nant of the Franktenement attourn upon such
grant of reversion. &c. And it is to wit, that
where a Lease for term of yeares, or for terme

of

of life, or a gift in the taile is made to any man, reserving to such a lessor or donor certain rent, if such a lessor or donor grant his reversion to another, and the tenant of the land attourne, the rent passeth to the grantee, though in the deed of the grant of reversion no mention is made of the rent, for this, that the rent is incident to the reversion in such case, and not è converso; for if a man will grant the rent in such case unto another, reserving to him the reversion of the land, though the tenant attourne to the grantee, this shall be but a rent seck, &c.

Also, if a man let land to another for terme of life, and after such lease he confirmes by a deed the estate of the tenant for terme of life, the remainder to another in fee. and the Tenant for terme of life accepteth the deed, then is the remainder indeed to him to whom the remainder was given or limited in the same deed. for by the acceptance of the tenant for terme of life of the same deed, this is a grant of him, and so an attournment in law: but yet he in the remainder shall have no action of waste nor other benefit by such remainder, but if he have the same deed in his hand by which the remainder was granted unto him, and for this, that in such case the tenant for terme of life will retaine to him the deed to the intent that he in the remainder shall not have an action of waste against him, for this, that he may not come to have the possession of the deed. &c. It shall be good in such case for him in the remainder, that a deed indented be made by him that will make the confirmation, and the remainder over, &c. And he that maketh such confirmation deliver a part of the

Inden-

Indenture to the tenant for terme of life and the other part to him that hath the remainder, and then he by shewing the part of the Indenture, may have an action of waste against the tenant for terme of life, and also other advantage that he in the remainder may have in such case.

Also, if two Joyntenants be, which let land to another for terme of life, yeelding to them and their heires a certaine rent by yeare: In this case if one of the two Joyntenants in the Reversion release to the other Joyntenement in the same reversion, this release is good, and he to whom the release is made, shall have onely the rent of the tenant for terme of life and shall have a writ of waste against him, though he never attourne by force of such release: And the cause is, for the privity that once was between the tenant for terme of life, and them in the reversion.

In the same manner and for the same cause it is where a man letteth Land to another for terme of his life, the remainder to another for terme of his life, reserving the reversion to the Lessor, in this case if he in the reversion release to him in the remainder, &c. and to his heires all his right, &c. then he in the remainder hath a fee, &c. and shall have a writ of waste against the tenant for terme of life without any attournment of him, &c.

Also, if a lease be made for terme of life, the remainder unto another in the taile, the remainder over the right heires of the tenant for terme of life, in this case if the tenant for terme of life grant his remainder in fee to another by his deed, the remainder by and by passeth by his deed without any other attournment. For if that any

ought

ought to attourn in this case, it should be the tenant for terme of life. And it were in vain that he attourn upon his own grant, &c.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by certaine rent and Knights services, if the Lord grant the services of the tenant by fine, the services be by and by in the grantee by force of the fine. but yet the Lord may not distrain for any parcell of his services, without attournment But if the tenant dye, his heires being within age, the Lord shall have the ward of the body of the heire, and of the land, &c. Howbeit that he never attourned: for this, that the seigniory was in the grantee maintenant by force of the fine.

And also in such case if the tenant die without heir, the Lord shall have the tenancy by way of Escheat. In the same manner it is if a man grant the reversion of his tenant for terme of life to another by fine, the reversion passeth presently to the grantee by force of the fine, but the grantee shall never have action of waste without attournment, &c. But if the tenent for terme of life alienre in fee, the grantee may enter, &c. for this, that the reversion was to him by force of the fine, and such alienation was to his disinheritance But in this case where the Lord granteth the services of his tenant by fine, if the tenant dye, his heire being of full age, the grantee by the fine shall not have the reliefe, nor never shall distrain for the relief except there had been some attournment of the tenant that died, &c. for of such things that lie in distresse upon the which a writ of Replegiari is sued, &c. a man ought to allow the taking good and righteous, &c. and

there

there ought to be attournment of the tenant
howbeit that the grant of such services be b
fine. But to have ward of lands and tenement
so holden during the nonage of the heire, or the
to have by way of Eschеate there needeth no
any distresse, &c but an entry in the land by for
of the right of the seigniory that the grantee ha
by force of the fine.

Also, in ancient Bourroughs or Cities wher
tenements within the same Burroughs o
Cities be devisable by testament by the custom
and the use &c. if in such Burrough, or City
man be seised of rent service, or of rent charge
and he deviseth such rent and service to anothe
by his testimony and dyeth &c. in this case he t
whom the devise is made may distraine for th
rent for the services behind, howbeit that the te
nant never attourned. In the same manner i
is, where a man letteth such tenements devis
ble to another for terme of life, or for terms o
yeeres, and deviseth the reversion by his testa
ment to another in fee or in fee taile, and dyeth
and anon after the tenant maketh waste h
to whom them devise was made shall have a Wr
of waste howbeit that the tenant never attour
ned: the cause is for this, that the will of the de
visor made by the Testament shall be perform
after the intent of the devisor, and if the effe
of this should be upon the attourning of th
tenant &c then peradventure the tenant would neve
attourne, and then the will of the devisor would
never be performed. and therefore the devise
shall distraine, or have an action of waste with
out attournment. For if a man devise such rent
ments to another by his testament (habend' sib
imperp

imperpetuum) and dyeth, and the deviſee entreth, he hath a fee ſimple, Cauſa qua ſupra, and yet if a deed of feoffement were made to him by the deviſor of the ſame tenements (habendum & tenendum ſibi imperpetuum) and livery and ſeiſin were thereupon made, he ſhall have no eſtate but for terme of life, &c.

Alſo, if a man be ſeiſed of a mannor which is parcell in demeſne, and parcell in ſervices, and thereof be diſſeiſed, but the Tenant which holdeth of the mannor, never attourneth to the diſſeiſor: in this caſe howbeit that the diſſeiſor dye, &c and his heire is in by deſcent, yet may the diſſeiſee diſtrain for the rent being behind, & have the ſervice. But if the tenants come to the diſſeiſor, & ſay, We become your tenants, &c or otherwiſe make attournment to him, &c. and after the diſſeiſor dyeth ſeiſed, &c then the diſſeiſee may not diſtrain for the rent, for that all the Mannor deſcended to the heire of the diſſeiſor. But if one hold of me by rent ſervice, which is a ſervice in groſſe, and another that no right hath, claimeth the rent, and receiveth and taketh the ſame rent of my tenant by coherſion of diſtreſs, or by other meane and ſo diſſeiſeth me by taking ſuch rent, howbeit that ſuch a diſſeiſor dye ſeiſed by ſuch taking of the rent, yet after his death I may well diſtraine for the ſame rent being behind before the death of the diſſeiſor, and alſo after his death: and the cauſe is this, that ſuch is not by diſſeiſor, but by election at my will: for howbeit that he took the rent of my tenant, I may at all times diſtraine my tenant for the rent behind, &c. ſo it is to me, but as I will ſuffer the tenant to be by ſo much time behind of payment

to me of the same rent: for the payment of my tenant to another to whom he ought not to pay is no disseisin to me, nor shall not put me out of my rent without my will and election; for how beit that I may have assise against such a taker yet this is at my election if I will take him as my disseisor or not, so that such descents of rent in gresse ne putteth not out the Lords from their distresse, but that at each time they may well distrain for the rent behind: And in this case if after the decease of him that so wrongfully took the rent, I grant by my deed the services to another, & the tenant attourneth, his is good enough and the services by such grant and attournment incontinent be in the grantee, &c. but otherwise it is where the rent is parcell of the Mannor and the disseisor dyeth seised of the whole Mannor, as in the case before said.

Discontinuance.

DIscontinuance is an ancient word in the Law, and hath divers significations, &c. but as to one intent it hath such a signification, that is to say, where a man hath alened to another certaine lands or tenements and dyeth, and another have right to have the same lands or tenements, but he ne may enter in them, because of such alienation, &c. As if an Abbot be seised of certain lands and tenements in fee, and he alieneth the same lands and tenements to another in fee, or in taile, or for terme of life, and the Abbot dyeth, his successor may not enter in the same lands & tenements, howbeit that he have right to have them as in the right of the house but he is put to his action to recover the same lands or tenements which is called a Writ de ingressu sine assensu capituli.

And

And if a man be ſeiſed of land as in the right his wife, &c. and thereof infeoffeth another, &c. and dyeth the wife may not enter, but ſhe is put to her action, the which is called Cuiin vita. 32. H. 8. c. 28. Leaſes.

Alſo, if tenant in the taile of certaine land hath infeoffe another, &c. and hath iſſue and dyeth, &c. his iſſue may not enter in the land, howbeit that he hath right and title to that, but that is put to his action that is called a Formedon in the deſcender.

Alſo, if there be tenant in taile, and the reverſion is to the donor and to his heires, if the tenant make a feoffement, &c. and dyeth without iſſue, he in the reverſion may not enter, but is put to his action of Formedon in the reverter. And in the ſame manner it is, where there is tenant in the taile of certain land where the remainder is to another in the taile, or to another in fee, if the tenant in the taile alieneth in fee, or in fee taile, &c. and after dyeth without iſſue, they in the remainder may not enter but be put to their writ of Formedon in the remainder, &c. and for this cauſe by force of ſuch feoffment and ſuch alienations in the caſes aforeſaid, and in like caſes all they which have title and right after the death of ſuch a Feoffor, or alienor may not enter, but are put to their actions ut ſupra, therefore ſuch feoffments and alienations be called diſcontinuances.

Alſo if a tenant in the taile be diſſeiſed, and he releaſeth by his deed to the diſſeiſor, and to his heires all the right that he hath in the ſame land, this is no diſcontinuance for this, that nothing of right paſſeth to the diſſeiſor but for terme of life of the tenant in the taile that made the re-

lease, &c. But by the feoffment of tenant in t
taile a fee simple passeth by the same feoffmen
by force of livery of seisin &c but by force of a re
lease, nothing passeth but the right he may la
fully, and rightfully release without hurt or da
mage to other persons which thereto have righ
after his decease, &c. and so it is a great diffe
rence between a feoffement of the tenant in th
taile, and a release of the tenant in the taile. Bu
it is said, that if tenant in the taile in this ca
release to the disseisor, and bindeth him and h
heires to warrantize, &c. and dieth, & this war
ranty descendeth to his issue, then that is a dis
continuance because of warrantize, &c. But
a man have issue a son by one wife which dyeth
and after he taketh another wife, and the tene
ments be given to him and his second wife, an
to the heires of their two bodies ingendred, an
they have issue another son, then the second wi
dyeth, and after the tenant in the taile is disseis
and he releaseth to his disseisee all his right, &c
and bindeth him and his heires unto warranti
and dieth, this is no discontinuance to the issu
in the taile by the second wife, but he may wel
enter, &c. for this that the warrantize descend
to his elder brother that his father had by h
first wife.

In the same manner where the tenements b
descendable to the younger son after the custom
of borrough English, which be intailed, &c. & th
tenant in the tail hath issue two sons & is disse
sed, and he releaseth to his disseisor all his righ
with warranty & dyeth, the yonger son may en
ter upon the disseisor notwithstanding the war
rantize for this, that the warrantize descendeth t
th

the elder son, for alwayes the warranty descen-
deth, &c. to him that is heire by the common law.

Also, if an Abbot be disseised, and he releaseth to the disseisor with warrantize, this is no dis-
continuance to his successor, for this, that no-
thing passeth by this release but the right that he hath during the time that he is Abbot, and this warrantize is expired by his privation or by his death.

Also, if tenant in the taile be seised of certain land, and he letteth the same land for terme of yeers, by force of which lease the lessee is in pos-
session, in which possession the tenant in the taile by his deed releaseth all his right that he hath in the same land to the Lessee and to his heires for ever, this is no discontinuance, but after the de-
cease of the tenant in the taile his issue may well enter, for this, that by such release nothing pas-
seth but for terme of life of the tenant in the taile. In the same manner if the tenant in the taile confirme the state of the lessee for terme of certain yeers to have and to hold to him and to his heirs, that is no discontinuance, for this, that nothing passeth by such confirmation, but the e-
state that the tenant in the taile had for term of his life.

Also, if a tenant in the taile by his deed grant to another all his estate that he hath in the te-
nements entailed to him to have and to hold all the estate to the other & to his heires for ever, and delivereth seisin accordingly. In this case the te-
nant to whom the alienation was made, hath no other estate but for terme of life of the te-
nant in tayle, and so it may well be proved that the tenant in the taile may not grant ne alien ne

make any rightful estate of the franktenement to another person but for terme of his own life, &c. For if I give certain land in the tayle to a man, saving a reversion to me, and after the tenant in the taile enfeoffeth another in fee, the feoffee hath no right estate in the tenements, for two causes. One is, for that by such feoffment my reversion is discontinued. Which is a wrong act and not a rightfull act. Another cause is, if the tenant dye and his issue sueth a writ of Formedon against the feoffee, the writ shall say, and also the declaration, that the feoffee wrongfully him defeized, therfore if wrongfully he him defeized he had no right estate.

Also, if land be let to a man for term of his life, the remainder to another in the tayl, if he in the remainder will grant his remainder to another in fee by his deed, and the tenant for terme of life attourneth, this is no discontinuance of the remainder.

Also, if a man be tenant in the tayl of an advowson in grosse, or of common in gross, if he by his deed will grant the advowson or the common to another in fee, this is no discontinuance, for in such case the grantee hath no estate but for terme of life of the tenant in the taile that made the grant, &c. Note wel, that such things that pass by way of grant made by deed, made in the countrey, &c. such grant maketh no discontinuance as in the case aforesaid, and other like cases, &c. And howbeit that such be granted in fee, by fine levied in the Kings Court, &c. yet they make no discontinuance, &c.

Also, if a man be seised in the tayle of lands devisable by testament, &c. and he deviseth it to another

another in fee, and dyeth, and the other entreth, this is no discontinuance, for this, that no discontinuance was made in the life of the tenant in the taile, &c.

Also, if an Abbot have a reversion, or a rent service, or a rent charge, and will grant that reversion, rent service, or rent charge to another in fee, and the tenant attourneth, &c. this is no discontinuance. In the same manner it is where an Abbot is seised of an advowson, or of such things that passe by way of grant without livery of seisin, &c.

Also, if there be Grandfather tenant in the taile, father, and son, and the Grandfather is disseised by the father, and the father maketh a feoffment in fee without warrantize and dyeth, and after the grandfather dieth, the son may well enter upon the feoffee, for this that this was no discontinuance, insomuch that the father was not seised by force of the taile at the time of the feoffment &c. but was seised in fee by disseisin made to the Grandfather.

Also if a woman inheritrix have an husband within age, which maketh a feoffment of the tenements of the wife, and dyeth, it hath been questioned if the wife may enter or not. And it seemeth to some men that the entry of the wife after the death of her husband shall be lawfull in this case; for when her husband made such a feoffment, &c. he might well enter notwithstanding such feoffement during the coverture, and he might not enter in his own right, but in the right of his wife, &c. Ergo such right that he had to enter in the right of his wife &c that right of entry abideth to the wife, &c. after his decease.

And it hath been said, that of two Joyntenants being within age, make a feoffement in fee and one of the children dieth, and the other surviveth, insomuch that both children might enter joyntly in their lives, this right of entry groweth all to him that survives, and so he may enter into the whole, &c.

Also, the heire of the husband that made the feoffment within age may not enter for this that no right descendeth to such an heire in the case aforesaid, for this, that the husband had never any thing but in the right of the wife And also when a child maketh a feoffement being within age this shal never grieve nor hurt him, but that he may well enter, &c. and this should be against reason, that such a feoffement made by him that was not able to make such a feoffment shall grieve or hurt other, to tell other of their entries, &c. and for these causes it seemeth to some, that after the death of such a husband so being within age at the time of the feoffment, &c. that his wife may well enter, &c.

Also, if a woman inheritrix taketh an husband, and hath issue a son and the husband dieth, and she taketh another husband, and the second husband letteth the land that he hath in the right of his wife to another for terme of his life, and after the wife dyeth, & after the tenant for term of life surrendreth his estate to the second husband, &c. Inquire if the son of the wife may enter or not, in this case upon the second husband during the life of the tenant for terme of life. But it is clear law in this case, that after the death of the tenant for terme of life, the son of the wife may wel enter, for this, that the discon-

tinuance

tinuance that was made all only for terme of life is determined by the death of the same tenant for terme of life.

Also, if the parson or vicar of a Church alien certaine lands or tenements parcell of his glebe, &c. to another in fee and dyeth, or resigneth, &c. his successor may well enter, notwithstanding such alienation, as it is said in a Note, Anno. 2. H. 4. Termino Mich. quæ sic incipit Nota quod dictum fuit pro lege, In a writ of account brought by the Master of a Colledge, that if a parson or a vicar grant certain land that is of the right of his Church to another, and dieth, or changeth, that his successor many enter. And I trow the cause is for this, that the parson or vicar that is seised, &c. in right of the Church hath no right of the fee simple in the tenements, but the right of the fee simple abideth to another person: And for this cause his successor may well enter, notwithstanding such alienation, &c. for a Bishop may have a writ of right of tenements of right of his Bishoprick, for this, that the right of fee simple abideth in him, and in his chapter. And a Dean may have a writ of right, &c for this, that the right abideth in him and in his Chapter. And an Abbot may have a writ of right, for that the right abideth in him, and in his Covent & sic de aliis casibus concimilibus, &c. but a parson or a vicar may not have a writ of right, &c. but the highst writ that they may have is a writ de jure suum. the which is a great proof, that the right of fee simple is in abeiance, that is to say all only in the remembrance, intendment, and consideration of the Law: for me seemeth that such a thing & such a right that is said in divers books

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to be in abeiance, is as much to say in latin, ita lis res, vel tale rectum quæ vel qd' non est in homine adtunc superstite sed tantummodo est & consistit in consideratione & intelligentia legis &c. & quidam alii dixerunt talem rem, aut tale rectum fore in nubibus, &c. But I suppose that they understand these words in nubibus, &c. as I have said before.

Also, if a Parson of a Church die, now the franktenement of the glebe of the parsonage is in no man, during the time that the Parsonage is void, but is in abayance, that is to say, in consideration and intelligence of the Law, till another be made Parson of the same Church, and immediately when another is Parson, the franktenement in deed is to him as successor.

Also, some men peradventure will argue and say, that insomuch that the parson with the assent of the Patron and Ordinary, may grant a rent charge out of the glebe of his parsonage in fee, and so charge the glebe of his parsonage perpetually, Ergo they have fee simple, or two or one of them hath fee simple at the least, &c. so thus it may be answered, that it is a principle in Law, that of every land there is a fee simple in some man, or else the fee simple is in abayance, &c. And another principle is, that every land of fee simple may be charged with a rent charge in fee, by one way or by another, &c. and when such rent is granted by the deed of the parson, the patron and the ordinary in fee, none shall have no prejudice nor lose by force of such grant, but the grantors in their lives, and the heire of the patron, and successor of the Ordinary after their deceases, and after such charge if the Parson dye, his successor

may

may not come to the same Church to the Parson of the same Church by the law but by presentment of the patron, and admission and institution of the Ordinary, &c. And for this cause it behoveth that the successor hold him content and agreed with that which his Patron, and Ordinary lawfully have done before. But the cause that such rent charge is gone, is, for that they which have entries in the said Church, that is to say, the Patron after the law temporall, & the Ordinary after the law spiritual, were assented as parties unto such a charge, &c. and this seemeth the very cause that such glebe may be charged in perpetuity, &c. See Stat. 21 Eliz. c. 20

Also, if a Bishop alien lands which be parcell of his Bishoprick and dieth, this is discontinuance to his successor for this, that he may not enter, but is put to his writ de ingressu sine assensu capituli, &c. See Sta. 1. Eliz.

Also if a Deane alien land, parcell of his deanry, and dieth, his successor may not enter, but he may have a writ de ingressu sine assensu capituli, &c. See Stat. 13. Eliz. c. 10.

But if the Deane and the Chapter have land to them and to their successors in common, &c. Howbeit that the Deane alien such lands, his successors may well enter, for that the franktenement at the time of the alienation was as well in the Chapter, as in the Deane. But where the deane is sole seised as in right of his deanry, then such alienation is discontinuance to his successor, as it is aforesaid.

Also some men will argue and say, that if an Abbot and his Covent be seised in their demean as of fee of certaine land to them and to their

succeſſors, &c and the Abbot without assent of his Covent alieneth the same land unto another, and dyeth, this is discontinuance to his succeſſors, &c. And by the same will say, that where a Deane and a Chapter is seised of certain land to them and to their succeſſors, if the Dean alien the same lands, &c. this shall be a discontinuance to his succeſſors, so that his succeſſor may not enter, &c To this may be answered that there is a great diversity between the said two cases; for when an Abbot and the Covent be seised, &c. yet if they be disseised, the Abbot shall have assise in his own name, without the naming of his Covent, &c. And if a man may or will sue a præcipe quod reddat of the same lands when they be in the hands of the Abbot and his Covent it behooveth that such an action be sued against the Abbot only without naming of the Covent, &c. for that all they be dead persons in the law, save only the Abbot that is soveraign &c. & this is because of the soveraignty, &c. for else he should be as the other Monks of the Covent &c. But the Deane and the Chapter be no dead persons in the Law, &c. For each of them may have an action by himselfe in divers cases, and of such lands or tenements which the Deane and Chapter have in common, &c. if they be disseised, that the Dean and the Chapter shall have assise, and not the deane alone, and if another will have an action reall of such lands or tenements against the Deane, &c. it behooveth him to sue against the Deane and Chapter, and not against the Dean alone, &c and so appeareth great diversity between these two cases.

Also, if the Master of an Hospital discontinue certain

certain land of his Hoſpital, his ſucceſſor may not enter, but he is put unto his Writ, De ingreſſu ſine aſſenſu contratrum & ſororum ſuarum; And alſo ſuch Writs do plainly appear in the Regiſter, &c.

Remitter.

REmitter is an ancient terme in the Law, and it is where a man hath two Titles to lands or Tenements, that is to ſay, one of an elder Title, and another of a latter Title, and he commeth to the land by the latter Title, yet the Law adjudgeth him to be in by force of the elder Title, for that the elder Title, is the more ſure Title, and the more worthy Title and then when a man is judged in by force of the more elder Title, this is unto him ſaid a Remitter, for this, that the Law ſhall admit him to be in the land by the elder Title: as if the tenant in the taile diſcontinue the taile, & after he diſſeiſeth the diſcontinuee, and ſo dieth ſeiſed, whereby the tenements deſcend to his iſſue, or to his couſin inheritable by force of the taile in this caſe this is to him to whom the tenements deſcend which had right by force of the taile a remitter in the taile forthat that the Law ſhall put and adjudg him to be in by force of the taile which is his elder Title; for if he ſhal be in the force of deſcent, then the diſcontinuee may have a Writ of Entry upon the diſſeiſin in the Per againſt him, and recover the tenements and his damages; but inſomuch, that he is in by force of the taile the title and the intereſt of the diſcontinuee is all utterly annulled and defeated &c.

Alſo, if tenant in the tail enfeoffee in fee his ſon or his couſin inheritable by force of the taile,

the

the which son or cousin at the time of the feoffment is within age, and after the tenant in the taile dyeth, and to he whom the feoffement was made is his heire by force of the title in taile, this is a Remitter to the heire in the taile, to whom the feoffment is made: for howbeit that during the life of the tenant in the taile that made the feoffment, such heire shall be adjudged in by force of the feoffment, yet after the death of the tenant in the taile the heire shall be adjudged in by force of the taile, &c. and not by force of the feoffment, and though that such an heir was of full age at the time of the death of the tenant in the tail that made the feoffement, this maketh no matter, if the heire were within age at the time of the feoffement made to him. And if such an heire being within age at the time of the feoffment commeth to full age, living the tenant that made the feoffment, and so being of full age he chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenant in the taile dyeth: Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by another estate in the land, then he was at the time of the charge made, insomuch that he is in his remitter by force of the taile, and so the estate that he had at the time of the charge is utterly defeated &c.

Also, a principall cause why such an heire in the cases aforesaid, and other cases semblable shall be said in his Remitter is for this, that there is no person against whom that he may sue his writ of Formedon, for against himselfe he may not sue, and he may not sue against any other, for no other is tenant in the franktenement,

and

and for that cause the Law adjudgeth him in his Remitter, that is to say, in such plight, as he had lawfully recovered the same land against another.

Also, if land be tailed to a man and his wife, and to the heires of their two bodies engendred, the which hath issue a daughter, and the wife dieth, and the husband taketh another, and hath issue another daughter, and discontinueth the taile, and after he disseiseth the discontinuee, and so dyeth seised, now the land descendeth to the two daughters: In this case as to the elder daughter that is inheritable, this is a Remitter but of the halfe, and as to the other halfe, she is put to her action of Formedon against her sister, for in this case the two sisters be not tenants in parcenary, but be tenants in common for this that they be in by divers titles, for the one sister is in her Remitter by force of the taile as to that that unto her belongeth: and the other sister is in, as to that that belongeth to her in fee simple by the descent of her father. In the same manner it is if the tenant in the taile infeoffee his heire apparant in the taile, the heir being within age, and another Joyntenant in fee, and the tenant in the taile dyeth, now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedon, &c.

Also if a tenant in the taile infeoffe his heir apparant, the heire being of full age at the time of the feoffement and after the tenant in the tail dyeth, this is no remitter to the heire, for this, that it was his own folly, that he being of full age would take sure feoffement, &c. But such

folly

folly may not be adjudged in the heire being within age of the time of the feoffment, &c.

Also, if a tenant in the taile infeoffe a woman in fee, and dyeth and his issue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this, that the husband and the wife be but one person in the Law: And in that case the husband may not sue a writ of Formedon, unlesse he will sue against himselfe, that which shall be inconvenient, and for that the law adjudgeth the heire in his Remitter, for this, that no folly may be attributed to him being within age at the time of the espousals, &c. And if the heire be in his remitter by force of the tayle, it followeth by reason that the wife hath nothing, &c. for insomuch that the husband & the wife be but one person the land may not be severed by halfes, and for such cause the Husband is in his remitter of the whole. But otherwise it is, if such an heire be of full age at the time of the espousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certain land in fee taketh an husband, the which alieneth the same Land to another in fee, and the Alienee letteth the same land to the husband and the wife for terme of their two lives, saving the reversion to the lessor and to the heire, in this case the wife is in her remitter, and she is seised indeed in her demesne as in Fee as she was before, for this, that the taking of estate shall be adjudged in the Law the deed of the husband, and not the deed of the wife, so that folly no may be judged in the wife that is covert in such case: And in this case the lessor hath nothing in the reversion, for

this

is that the wife is seised in Fee. But in this
seif the lessor will sue an action of waste a-
inst the husband & his wife, for this, that the
sband hath not Waste, the husband may not
the lessor for to shew this, that the taking of
ate made unto him and to his wife, made a
emitter to his wife, for this, that the husband
stopped to say this against his feoffement and
n repriseil of estate for terme of life to him
d his wife, & yet the Lessor hath no reversion,
that the fee simple is in the wife. So a man
y see a matter in this case, that a man shall
stopped by a matter in deed, though no wri-
g by deed indented, or otherwise be thereof
de. But if in an action of Waste the hus-
nd make default of the grand distresse, and the
ife prayeth to be received, and is received, she
all well shew all the matter, and how she is
her Remitter, and shall bar the Lessor of his
tion: For in every case that the wife is recei-
d for default of her husband, she shall plead,
d have the same advantage in pleading, as she
re a woman sole. And howbeit that the
lienee made no lease to the husband and his
ife by deed indented, yet this is a Remitter to
wife, and though the Alienee yeelded the same
and to the husband and his wife by fine for
me of their lives, yet this is a Remitter to
wife, for this that the wife covert that ta-
th estate by fine shall not be examined by the
ustices. And here note well, that when any
ng shall passe from the wife that is covert of
sband by force of a fine, as the husband and
ife make conusance of right to another, &c. or
ke a grant to yeeld to another, or release by

a fine to another, & ſic de ſimilibus, where the right of the wife paſſeth from the wife by force of the ſame, the wife in all ſuch caſes ſhall be examined before that the fine be accepted. And ſuch fines conclude ſuch wives covert for ever. But where nothing is moved in the fine, but all only that the husband and the wife take eſtate by force of the ſame fine, this ſhall not conclude the wife, for this, that in ſuch caſe ſhe ſhall never be examined.

Alſo, if tenant in the taile diſcontinue in the taile, and hath a daughter and dyeth, and the daughter being of full age taketh an husband and the diſcontinuee maketh a leaſe of this to the husband and his wife for terme of their lives this is a Remitter indeed to the wife, and the wife is in by force of the taile. Cauſa qua ſupra.

Alſo, if land be given to the husband and his wife, to have and to hold to them and to the heirs of their two bodies begotten, and after the husband alieneth the land in fee, and taketh again an eſtate to him and to his wife for term of their two lives. In this caſe this is a Remitter indeed to the husband and the wife, maugre the husband; for it may not be a Remitter to the wife, except it be a Remitter to the husband for this, that the husband and the wife be but one perſon in the law, though that the husband is ſtopped to claime this to be a Remitter in him againſt his alienation and his own repriſal, as is aforeſaid.

Alſo, if land be given to a woman in the taile, the remainder to another in the taile, the remainder to the third in the taile. the remainder to the fourth in fee, and the wife taketh an husband,

and

and the husband discontinueth the land of his wife by this discontinuance all the remainders be discontinued; for if the wife die without issue they in remainder shall have no remedy, but to sue their writs of Formedon in the remainder when they come to their time, &c. But if after such discontinuance, estate to made to the husband and his wife for terme of their two lives, or for terme of anothers life, or another estate, &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder, &c. For after this that the wife, that is in her Remitter dieth without issue they in the remainder may enter &c. without an action of suite, &c. In the same manner it is of them which have the reversion after such taile, &c.

Also. if a man let an house to a woman for terme of her life saving the reversion to the lessor, and after one sueth a faint and false action against the woman, and recovereth the house against her by default, so that the woman may not be against him a writ of Quod ei deforceat. after the Statute of Westminster the second, chap. now is the reversion of the lessor discontinued, so that he may not have an action of Waste. But in this case if the woman take an husband and he that recovereth letteth the house to the husband and his wife for terme of their two lives, the wife is in her Remitter by force of the first Lease. And if the husband and the wife make Waste, the first lessor shall have against them a writ of Waste for this that insomuch that the wife is in her Remitter, he is remitted to his reversion. But it seemeth in this case, if he that recovereth by the false action, will bring an-

other writ of Waste against the husband and the wife, the husband hath no remedy against him, but to make default of the great distresse, &c. and to cause the wife to be received and to plead the matter against the second Lessor, and to shew that the action by which he recovered was faigned and feigned in the Law, and so the wife may bar, &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wife and a third man for terme of their lives or in fee, this is a Remitter to the woman but not to the moity. And as for the other moity it behoveth her after the death of her husband to sue a Cui in vita.

Also, if the husband discontinue the land of his wife, and go over the Sea, and the discontinuee let the same land to the woman for terme of life and deliver to her seisin, and after the husband commeth and agreeth to that livery of seisin, this is a Remitter to the woman, and yet the woman had been sole at the time of her Lease made to her, this should be to her no Remitter but inasmuch as she was covert baron at the time of the Lease, and the livery of seisin made to her thought that she only take the livery of seisin, this was a Remitter to her, because a woman covert shall be adjudged as an Infant within age in such case, &c. Inquire in this case if the husband when he commeth again will disagree to the lease and livery of seisin made to his wife in his absence, if this shall put the woman from her Remitter.

Also, if the husband discontinue ȳ tenement of his wife, and the discontinuee is disseised, and

after

after the disseisor letteth the said tenements to the husband and his wife for terme of life, this is a Remitter to the wife: but if the husband and the wife were of covin or consent that the disseisin should be made then it is no Remitter to the wife because she is a disseisoresse. But if the husband were of covin and consent to the disseisin, and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuee had made estate of freehold to the husband and the wife, by Indenture upon conditions, reserving to the discontinuee a certain rent, and for default of payment a reentry, and because that the rent is behind, the discontinuee entreth, of this rent the woman shall have Assise of Novel disseisin, after the death of her husband against the discontinuee because that the condition was wholly abolished, insomuch as the woman was in her remitter, yet the husband with his wife could not have assise, because the husband is stopped.

Also if the husband discontinue the Tenements of his wife, and taketh estate again for terme of his life, the remainder after his decease to his wife for terme of her life, in this case this is no remitter to the wife during the life of her husband, because that during the life of the husband, the wife hath nothing in the Freehold; but if in this case the wife overlive the husband, this is a Remitter to the wife, because that a Freehold in Law is fallen upon her, maugre her will, and insomuch that she can have no action against no other person, and against her selfe she can have no action, therefore

she is in her remitter; for in this case though that the woman enter not into the tenements, yet a stranger that hath cause to have action may sue his action against the woman of the same tenements, because she is tenant in Law, though she be not Tenant in deed, for Tenant of franktenement in deed is he, that if he be disseised of franktenement, may have assise, but the tenant in the Law before his entry shall have no assise: and if a man seised in fee of certaine land hath issue a son which taketh a wife, and the father dieth seised, and after the son dyeth before any entry made by him into the land, the wife of the son shall be endowed in the land and yet he had no franktenement in deed, but he had a fee and a franktenement in Law. And note well that a Præcipe quod reddat may be as well maintained against him that hath the franktenement in Law, as against him that hath franktenement in deed.

Also, if a tenant in the taile hath issue two sons at full age and he letteth the tailed land to the elder son for terme of his life, the remainder to the younger son for terme of his life and after the tenant in the taile dyeth: In this case the elder son is not in his remiteer, because he took estate of his father; but if the elder son dye without issue of his body then this is a remitter of the younger brother, because he is heire in the tayle, and a franktenement in law is fallen upon him by force of the remainder & there is none against whom he may sue his action, &c. In the same manner it is where a man is disseised, and the disseisor dyeth thereof seised, and the tenements descend to his heire, and the heire of the disset-

diſſeiſor maketh a leaſe to a man of the ſaid tenements for terme of life, the remainder to the diſſeiſee for terme of life, or in tail, or in fee, and the Tenant for terme of life dieth, now this is a Remitter to the diſſeiſee, &c. Cauſa qua ſupra.

Alſo, if a tenant in the taile infeoffe his ſon and another of the tailed land in fee, and livery of ſeiſin is made to the other according to the deed, the ſon not knowing thereof, nor agreeing to the Feoffment, and after he that tooke the livery of ſeiſin dieth, and the ſon occupieth not the Land, nor taketh any profit of the Land during the life of his father, and after the Father dieth, now this is a Remitter to the ſon, becauſe the freehold is fallen upon him by the ſurvivor, and no default was in him, becauſe he never agreed or in the life of his father, and there is none againſt whom he may purſue his Writ of Formedon, &c. For if a man be diſſeiſed of certaine Land, and the diſſeiſor maketh a deed of feoffement, whereof he infeoffeth B. C. and D. and the livery of ſeiſin is made to B. and C. but D. was not at the Livery of ſeiſin nor never agreed to the feoffement, nor never could take the profits, &c. And after B. and C. die, and D. overliveth them and the diſſeiſee bringeth this Writ for diſſeiſin in the Per, againſt the ſame D. he ſhall ſhew all the matter, and how that he never agreed to the feoffment, and ſo he ſhall diſcharge himſelf of damages, ſo that the demandant ſhall recover no damage againſt him, though that he be tenant of the franktenement of the land. And yet the ſtatute of Gloceſter will, that the diſſeiſee ſhall recover damage in a Writ of Entre, grounded upon the Novel diſſeiſin, againſt him

that is found tenant. And this is a proofe in the other case; that inasmuch as the issue in the taile commeth to the franktenement not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, inasmuch that he can sue an action of Formedon against no other person.

Also, if an Abbot alien the land of his house to another in fee, and the Alienee by his deed chargeth the land with a rent charge in fee, and after the alienee enfeoffed the Abbot with licence, to have and to hold to the Abbot and his successors for ever, and after the Abbot dieth, and another is chosen and made Abbot: In this case the Abbot that is successor, and his Covent be in their remitter, and shall hold the land discharged, because that the same Abbot cannot have an action of his writ of Entre sine assensu Capituli of the same lands against no other person. In the same manner it is where a Bishop or Deane, or other such person alien, &c. without assent, &c. And after the Bishop taketh estate againe of the same land by licence to him, and to his successors, and after the Bishop dyeth, his successor is in his Remitter as in the right of his Church, and shall defeat the charge, &c. Causa qua supra.

Also, if a man sue a false action against tenant in the taile, as if a man will sue against him a writ of Entre in the Post, supposing by his writ that the tenant in the taile had not his entry but by A. of B. that disseised the Grandfather of the demandant, and that is false, and he recovereth against the tenant in the taile by default, and sueth execution and after the tenant in the

he taile dyeth his issue may have a writ of Formedon against him that recovered: And if hee will plead the recovery against the tenant in the taile, the issue may say, that the said A. of B. disseised not the Grandfather of him that recouered in such manner as his writ supposeth, and he shall falsifie his recovery. Also, suppose that it was true, that the said A. of B disseised the Grandfather of the demandant that recovered, and that after the disseisin the demandant or his father, or his Grandfather by a deed had released to the tenant in the taile, all the right that he had in the land, &c. and this notwithstanding he sueth his writ of Entre in the Post against the tenant in the taile, in the manner as is before said, and the tenant in the taile pleaded to him, that the said A. of B. disseised not his Grandfather, as his writ supposeth: and upon this they be at issue and the issue is found for the demandant, whereby he hath judgement to recouer, and sueth execution, and after the tenant in the taile dyeth, his issue may have a writ of Formedon against him that recovered. And if he will plead the recovery by action tried against his Father tenant in the taile, then he may shew and plead the release made to his Father, and so the action that was sued was faint in the Law, &c.

And it seemeth that faint action is as much to say in English as fained action, that is to say, such action, that though the words of his writ be true, yet for certain causes he hath no cause nor title in the Law to recover by the same Action. And false action is where the words of the writ be false: And in the two cases before-

said,

said, if the case were such that after such a recovery and execution thereof made, the tenant in the tatle had disseised him that recovered, and thereof died seised, whereby the land also descended unto his issue, this is a Remitter to the issue, and the issue is in by force of the tatle: And for that cause I have put these two cases aforesaid, to informe thee (my son) that the issue in the tatle by force of a descent made to him after a recovery and execution thereof made against his ancestor, may be as well in his Remitter, as he should by descent made to him after a discontinuance made by the ancestor of the tatled land by feoffment in the country, or otherwise.

Also, in the same case aforesaid, if the case were such that after the demandant hath judgement to recover against the tenant in tatle, and the same tenant in the tatle dyed before any execution had against him, whereby the tenements descend to his issue and he that recovered sued a Scire facias to have execution of the judgement against the issue in the tatle, the issue shall plead the matter, as before is said, and so shall prove that the recovery was false or faint in the Law, and so shall bar him to have execution of the judgment, &c.

Also, if the tenant in the tatle discontinue the tatle, and die, and his issue bringeth a writ of Formedon against the discontinuee being tenant of the freehold of the land, and the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: In this case the judgement shall be, that the tenant go without day, and after such judgement, the issue in the tatle that is demandant may well enter

er in the land, notwithstanding the discontinu-
nce. And by such entry he shall be adjudged in
is remitter, and the cause is, because that if
any man sue a Præcipe quod reddat against any
tenant of freehold, in which action the deman-
ant shall not recover dammages, and the tenant
leadeth Nontenure, or otherwise disclaimeth in
the tenancy, the demandant may not aver in the
writ, that he is tenant as the writ supposeth.
And for that cause the demandant after that the
judgment is given, that the tenant shal go with-
out day, may enter into the tenements deman-
ded, the which shall be as great advantage to
him in the Law, as if he had judgement to re-
cover against the tenant. And by such entry he is
in the Remitter by force of the taile: but where
the demandant recovereth damages against the
tenant, there the demandant may aver that he is
tenant as the writ supposeth. and that for the
advantage of the demandant for to recover his
damages, or else he shall not recover his da-
mages, the which damages be or were given
him by the law.

Also, if a man be disseised, and the disseisor
dye, his heire being in by his descent, now the
entry of the disseisee is taken away. And if the
disseisee bring his writ of Entre upon the disseis-
sin in the Per against the heire, and the heire dis-
claimeth in the tenancy &c the demandant may
aver his writ, that he is tenant as the writ sup-
poseth, if he will, for to recover his damages.
But yet if he will leave the averment &c. he may
lawfully enter into the land, because of the dis-
claimer, notwithstanding that his entry before
was taken away. And that was adjudged be-
fore

for my Master Sir Robert Dandy, late chiefe Justice of the Common Pleas, and his companions, 5. E. Fol. 1. & 45.

Also, where the entry of a man is lawfull, though that he take estate to him when he is of full age for terme of life, or in tayle, or in fee, this is a Remitter to him, if such taking of estate be not by deed indented, or by matter of record that shall conclude or stop him: for if a man be disseised, and thereof taketh estate of the disseisor without deed or by deed Poll, that is a good Remitter of the disseisee.

Also, if man let land for terme of life to another, which alieneth to another in fee, and the Alienor maketh estate to the Lessor, this is a remitter to the Lessor, because his entry was lawfull

Also, if a man be disseised, and the disseisor letteth the land to the disseisee by deed Poll, or without deed for terme of yeares, whereby the disseisee entreth, this entry is a Remitter to the disseisee: for in such case where the entry of a man is lawfull, and a lease is made to him though that he claime by words in the Countrey, that he hath estate by force of such Lease, or saith openly that he claimeth nothing in the land, but by force of such Lease, yet this is a Remitter to him, for such claime in the Countrey is nothing to purpose: but if he claime in a Court of Record, that he hath estate but by force of such lease and not otherwise, then he is concluded, &c.

Also, if two Joyntenants seised of certaine land in fee, the one being of full age, the other within age be disseised, and the disseisor dieth seised,

ſe, and his iſſue entreth, the one of the joyntenants being then within age, and after that he commeth to full age, the heire of the diſſeiſor letteth the land to the ſame Joyntenants for term of their lives, this is a Remitter as to the halfe to him that was within age, becauſe that he is ſeiſed of the moity that belongeth to him in Fee, becauſe his entry was lawful. But the other Joyntenant hath in the other halfe but eſtate for terme of life by force of the leaſe, becauſe his entry was taken away, &c.

Warranty.

IT is commonly ſaid, that there be three manner of warranties; that is to ſay: warranty lineall, warranty collaterall, and warranty that beginneth by diſſeiſin. And it is to wit, that before the ſtatute of Glouceſter, all warranties which deſcended to them which were heires to them that made the warranty, were bars to the ſame heires to demand any lands or tenements againſt thoſe warranties except the warranties that began by diſſeiſin, for ſuch warranty was never bar to the heire, becauſe the warranty began by wrong, that is to ſay, by diſſeiſin.

Warranty that beginneth by diſſeiſin is in ſuch forme: As where there is father and ſon, and the ſon doth purchaſe land, &c. and letteth the ſame land to his father for terme of yeares, and the father by his deed therof enfeoffeth another in fee, and bindeth him and his heires to warranty; and if the father die, whereby the warranty deſcendeth to his ſonne, this warranty ſhall not bar the ſonne, for notwithſtanding this warranty, the ſonne may well enter into

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the land, or have an assise against the alienee, if he will because the warranty began by disseisin for when the father that had no estate but for terme of years made a feoffment in fee this was a disseisin to the son of the frankstenement that then was in the son. In the same manner it is if the son let unto the father the land to hold at will, and after the father maketh a feoffment with warranty, &c. and as it is said of the father, so it may be said of every other ancestor, &c.

In the same manner it is of tenant by Elegit, tenant by Statute Merchant, or tenant by Statute Staple, maketh a Feoffment in Fee with warranty, &c. this shall not bar the heire that ought to have the land, because that such warranties begin by disseisin.

Also, if a Warden in chivalry, or Warden in socage, make a feoffment in fee, in fee taile, or for terme of life with warranty, &c. such warranties be no bars to the heires to whom the land shall descend, because that they begin by disseisin

Also, if the father and the son purchase certaine lands, or tenements, to have and to hold to them jointly, &c. and after the father alieneth the whole to another, and bindeth him and his heirs to warranty &c. and after the father dieth, this warranty shall not bar the son of the moity that belongeth unto him of the same tenement, because that as to the moity that belonged to the son the warranty began by disseisin.

Also, if A. of B. be seised of a mease and F. of G. that hath no right to enter into the same mease, claiming to hold the same mease to him and to his heires, enter into the same mease but A. of B. then is continually dwelling in the same

same meale, in this case the possession of the franktenement shall be alway adjudged in A. of B. and not in F. of G. because that in such case where two be in one meale, or in other tenements and the one claimeth by one title, and the other by another title, the law shal adjudge him in possession that hath right to have the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffment to certain barretors and extoztioners in the country for to have maintenance of them of the same meale, by a deed of feoffement with warranty by force of which the said A. of B. dare not dwell in the same meale, but geeth out of the same meale, this warranty beginneth by disseisin, because such a feoffment was cause that the said A. of B. left the possession of the same meale.

Also, if a man that hath no right to enter in anothers tenements, enter into the said tenements, and incontinently maketh a Feoffement to other persons by his deed with warranty, and delivereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffment were made as it were at one time. And that this is law, ye may see it in a plea. Anno 31. Edwardi tertii in a writ of Formedon in the Reverſion, Garr' Fitzh. 28.

Warranty lineall, is where a man seized of certain lands in fee, maketh a feoffement by his deed to another, and bindeth him and his heires to warranty, and hath issue and dieth, and the warranty descendeth to his issue, this is a lineal warranty: and the cause why this is a lineall warranty, is not because that the warranty descendeth from the father to his heir, but the cause

is,

is because that if no such deed with warranty had been made by the father, then the right of the tenements should descend to the heir, and the heire should convey the descent from the father, &c. For if there be father and sonne, and the son purchase tenements in fee, and the father disseiseth the son thereof, and alieneth it to another in fee by his deed, and by the same deed bindeth him and his heires to warrant the same tenements, &c. and the father dyeth, now is the son barred to have the said tenements, for he may by no suit, nor by any other meanes have the said tenements because of the said warranty: And this is a collaterall warranty, and yet the warranty descendeth lineally from the father to the son. But because that if no such deed with warranty had been made, the sonne in no manner might convey the title that he hath of the tenements from his father to him, insomuch that his father had no estate nor right in the tenements, therefore such warranty is called collaterall warranty: Insomuch that he that made the warranty is collaterall to the title of the tenements, and that is as much to say, that he to whom the warranty descended could not convey the title that he had in the tenements by him that made the warranty in this case, if no such warranty had been made.

Also, if there be grandfather, father, and son, and the grandfather is disseised, in whose possession, the father releaseth by his deed with warranty, &c. and dyeth, and after the grandfather dyeth, now is the son barred of the tenements by the warranty of his father, and this is called lineall warranty, because that if no such

ch warranty had been made, the son might not have conveyed the right of the tenements to him to shew how he is heir to the Grandfather, but by means of the Father, &c.

Also, if a man have issue three sons and is disseised, and the elder son releaseth to the disseisor by his deed with warranty, &c. and dyeth, without issue, and after this the father dyeth; this is a lineall warranty to the younger son. because that though the elder son died in the life of the Father, yet by possibility it might be, that might convey to him the title of the land by his elder brother, if no such warranty had been made: for it might be that after the death of the father, the elder brother entred into the tenements and died without issue, and then the younger son shall convey to him the title of his elder brother. But in this case if the younger son release with a warranty to the disseisor, and dieth without issue, this is a collaterall warranty to the eldest son, because that of such land as was to brother, the elder brother by no possibility might convey to him the title by meane of the younger brother.

Also, if the tenant in the taile hath issue three sons, and discontinue the taile in fee, and the middle son releaseth by the deed to the discontinuee, and bind him and his heires to warrantize, &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder son barred to have any recovery by a writ of Formedon, because that the warranty of the middle brother is collaterall to him, insomuch that he may by no manner convey to him by force of the taile, any descent by the middle

brother, and therefore it is a collateral warranty. But if in this case the elder brother die without issue, now the yonger brother may well have a Formedon in the discender. & recover the land, because that the warranty of the middle brother is lineal to the younger brother. because may be, that by possibility the middle brother may be seized by force of the tail after the death of the elder brother, and then the yongest brother may convey his title of discēt by the middle brother,

Also, if the tenant in the tatle discontinue the tatle, and hath issue and die, and the uncle of the issue release to the discontinuee with warranty and die without issue, this is a collateral warranty to the issue in the tatle, because that the warranty descendeth upon the issue, which cannot convey himself to ỹ tail by mean of his uncle

Also, if the tenant in the tatle hath issue two daughters and dy. and the elder daughter entreth into the whole, & thereof make a feoffement in fee with warranty, & after the elder daughter die without issue: In this case the yonger daughter is barred, as to the moity, & as to the other he she is not barred, for as to the moity that belongeth to the yonger daughter, she is barred because that as to the moity that belongeth to her she cannot convey the descent by ỹ means of her elder sister, and therefore as to the moity this collateral warranty, but as to the other moity which belongeth to her elder sister, by the same the warranty is no bar to the yonger sister, because that she may convey her descent to that moity that belongeth to her elder by the same elder sister. And so as to the moity that belongeth to the elder sister, the warranty as that is lineal to the younger sister.

And note well, that as to him that demandeth fee simple by any of his ancestors, he shall be barred by lineal warranty which descendeth upon him, except he be restrained by some statute, but he which demandeth fee taile by a writ of Formedon in the discender, shall not be barred by lineal warranty, except he have enough by descent in fee simple by the same ancestor that made the warranty. but a collateral warranty is a bar to him that demanded fee, and also to him that demandeth fee taile, without any other descent of fee simple, except in cases that be restrained by the statute, and other cases for certain causes as shal be said hereafter.

Also, if land be given to a man and to his heires of his body begotten, the which taketh a wife, and hath issue a son between them, and the husband discontinueth the taile in fee, and dyeth, and after the wife releaseth to the discontinuee in fee with warranty, and dyeth, and the warranty descendeth to the son, this is a collateral warranty. But if tenements be given to the husband and the wife, and to the heires of their two bodies begotten, which have issue a son and the husband discontinueth the taile, and dieth, and after the wife releaseth with warranty and dyeth, this warranty is but a lineal warranty to the son, for the son shal not be barred in his case to sue his writ of Formedon, except hee be enough by descent in fee simple by his mother, because that their issue in a writ of Formedon ought to convey to him the right as heire to his father and to his mother of their two bodies begotten by form of the gift. And so in such case the warranty of the father, and the war-

ranty of the mother, be but as lineal warran
ties to the heire &c And note well and in ever
case where a man demandeth tenements in f
taile by a writ of Formedon, if any of the issue
in the taile that had possession or that hath po
session make a warranty &c if he that sueth t
writ of Formedon might by any possibility h
matter that might be in deed, convey to him, b
him that made the warranty by the forme of t
gift: This is a lineall warranty, and not co
laterall.

Also, if a man have issue three sons, and he g
veth land to the eldest son, to have and to hold
him and to his heires of his body begotten, an
for default of such issue, the remainder to t
middle son, to him, and to the heires of his bod
begotten, & for default of such issue the remain
der to the youngest son, and to the heires of h
body begotten, in this case if the eldest son di
continue the taile in fee, and bind him and h
heires to warranty, and die without issue, this
a collaterall warranty to the middle son, and
shall be barred to demand the same land by for
of the remainder, because that the remainder
his title, and his eldest brother is collaterall
the title which beginneth by force of the remain
der.

In the same manner it is if the middle son h
the same land by force of the remainder, becau
that his eldest brother made no discontinuanc
but dieth without issue of his body, and after t
middle son maketh a discontinuance with war
ranty, &c. and dieth without issue, this is a co
laterall warranty to the youngest son, and al
in this case, if any of the said sonnes be disseis
an

and the father that made the gift releaſe to the diſſeiſor all his right, &c. with warranty, that is a collateral warranty to the ſon upon whom the warranty deſcended, Cauſa qua ſupra. And ſo note well, that where a man that is collaterall to the title, &c. releaſeth with warranty, this is a collaterall warranty.

Alſo, if the father give land to his elder ſon, to have and to hold to him & to his heirs males of his body begotten, the remainder to the ſecond ſon, &c. if the eldeſt brother alien in fee with warranty, &c. and hath iſſue female, and dieth without iſſue male, this is not a collateral warranty to the ſecond ſon, or ſhall not hurt him of his action of Formedon, in the remainder, becauſe that the warranty deſcendeth to the daughter of the eldeſt ſon and not to the ſecond ſon. For every warranty that deſcendeth, deſcendeth to him that is heire unto him that made the warranty by the Common Law, &c.

Alſo if Land be given to a man and to his heirs males of his body begotten, and for default of ſuch iſſue the remainder thereof to his heirs females of his body begotten, and after the donee in the taile maketh a feoffment in fee with warranty according, and hath iſſue a ſon and a daughter and dyeth, this warranty is but a lineall warranty to the ſon, to demand by writ of Formedon in the deſcender. And it is but lineall to the daughter to demand the ſame land by writ of Formedon in the remainder, if her brother die without heire male, becauſe that ſhe claimeth as heire female of the body of her father begotten. But in this caſe, if her brother in this life releaſe to the diſcontinuee with

warranty, &c. and after die without issue, this t
a collateral warranty to the daughter, becau
that she cannot conceive to her the right that sh
had by force of the remainder by any meane o
descent by her brother, and therefore the broth
is collateral to the title of his sister, and therfo
his warranty is collateral &c.

Also I have heard say, that in the time o
King Richard the second, there was a Justice t
the Common Pleas, dwelling in Kent, calle
Rickhil, that had issue divers sons: and his in
tent was that his eldest son should have certai
lands to him and to his heires of his body be
gotten, and for default of issue the remainder t
his second son &c. and so the third son, &c. Bu
because that he would that none of his sonne
should alien or make Warranty for to bar or t
hurt the other that should be in the remainder, &c
He caused to be made an Indenture to such ef
fect that is to say that the lands and tenement
were given to his eldest son upon this conditi
on, that if the eldest son altened in fee or in fe
taile, &c. or any of his sons altened, &c that the
their estate should cease and should be void, an
that then the Lands and Tenements immedi
ately should remain to the second son, and to th
heires of his body begotten and that upon th
same condition, that is to say, if the second so
alien &c that then his estate should cease, & tha
then the same lands and tenements should re
maine to the third son, and to the heires of hi
body begotten, &c. the remainder to other of h
sons, and livery of seisin was made according
But it seemeth by reason that all such remain
ders in the form beforesaid be void, and of n

haine, and that for three causes. One cause is, because every Remainder that beginneth by a deed it behoveth that the remainder be in him to whom the remainder is tailed by force of the same deed, when the livery of seisin is made to him that hath the Franktenement And such remainder was not to the second son at the time of Livery of seisin in case beforesaid &c.

The second cause is if the first son alien the tenements in fee, then is the franktenement and the Fee simple in the alienee and in none other, and if the donor had any reversion, by such alienation the reversion is discontinued, then how by any reason may it be that such remainder shal begin his being and his growing immediately after such alienation made to a stranger, that hath by the same alienation Franktenement, and fee simple, and also of such remainder should be good, then might he enter upon the alienee, where he had no manner of right before the alienation, which should be inconvenient. The third cause is, when the condition is such, that if the eldest son alien, &c. that his estate shal cease, or shal be void, &c then after such alienation, &c. may the donor enter by force of such condition, &c. as it seemeth, and so the donor or his heires in such case ought more sooner to have the land, then the second son that hath no right before such alienation, &c. and so it seemeth that such remainders in the case aforesaid be void.

Also, at the Common Law before the statute of Glocester, if the tenant by curtesie had alienned in Fee with warranty according, after his decease, this was a bar to the heire, &c. as it appeareth by the words of the same statute:

But it is remedied by the same statute, that the Warranty of the Tenant by the curtesie shall be no bar to the heire, except he have enough by descent by the tenant by the curtesie. for before the said statute that was a collaterall Warranty to the heire, because he could not convey any Title of descent to the tenements by the Tenant by the curtesie, but only by his mother or other of his ancestors, &c. and that is the cause why it was a collaterall Warranty. But if a man Inheritor take a wife, which bade issue a son between them, and the father dieth and the son entreth into the Land, and endoweth his mother, and after his mother alieneth that that she hath in her dower to another in fee, with Warranty according, and after dieth, and the Warranty descendeth to his son, now the son shall be barred to demand the same land because of the said Warranty, because that such collaterall Warranty of tenant in dower is not remedied by any statute. The same law is where tenant for terme of life maketh an alienation with Warranty, &c and dyeth and the Warranty descendeth to him that had the reversion, or the remainder, &c. they shall be barred by such Warranty, &c.

Also, in the said case, if it so were that when the Tenant in dower alieneth &c. the heire was within age, and also at that time that the Warranty descendeth unto him, he was within age, in this case the heire may after enter upon the Alienee, notwithstanding the Warranty descendeth, &c because that no laches shall be adjudged in the heire within age, that he entred not upon the Alienee in the life of the tenant in Dower;

but

but if the heire was within age at the time of the Alienation, and after he came to full age of the life of the tenant in dower, and so being full age, he entred not in the life of the tenant in Dower, and after the tenant in Dower dieth, there peradventure the heire shall be barred by such Warranty; because it shall be accounted his folly, that he being of full age, entred not in the life of the tenant in dower, &c.

Also it is spoken in the end of the said Estatute of Gloucester, that speaketh of the alienation with Warranty made by the tenant by the curtesie in such forme.

Also, in the same manner the heire of the woman after the death of his father and mother shall not be barred of action, if he demand the heritage or the marraige of his mother by a writ of entry that his father altened in the time of his mother. Wherof no fine is levied in the Kings Court, &c And so by force of the same statute, if the husband of the wife alien the heritage or marriage of his wife in fee with Warranty, &c. by his deed in the Country, that is cleer law, that this Warranty shall not bar the heir except he have enough by descent, &c. But the doubt is if that the husband alien the heritage of his wife by fine levied in the Kings Courts with warranty, &c. if this shall bar the heire without any descent in value, &c. And as to that I will say here certain reasons that I have heard say in this matter. I heard my Master Sir Rich. Newton late Chiefe Justice of the Common Pleas say once in the same pleas, that such Warranty that the Baron maketh by fine levied in the Kings Court, shall bar the heire, though

that

that he have nothing by descent, because the statute saith wherof no fine is levied in the Kings Court, &c. And so by his opinion, this warranty by fine, &c. abideth yet a collateral warranty, as it was at the Common Law not remedied by the said statute, because that the said estatute excepteth the alienation by fine with warranty. And some other have said, and yet say the contrary, & this is their proof, that as by the same chap. of the said estatute is ordained, that the warranty of the Tenant by the curtesie shall not bar the heire, except he have enough by descent, &c though that the Tenant by the curtesie levy a fine of the same lands with warranty, &c. as strongly as he can, yet this warranty shall not bar the heire, except he have assets or enough by descent &c. And I beleeve that this is Law, and therefore they say, that it should be inconvenient to understand the statute in such forme that a man that hath not but in the right of his wife, may by fine levied himselfe of the tenements that he hath but in the right of his wife with warranty, &c. bar the heire of the said tenements without descent of the fee simple. &c. where the tenant by the curtesie cannot doe it. But they have said that the statute shall be understood after this forme, that is to say. where the statute speaketh wherof no fine is levied in the Kings Court, that is to say, whereof no lawfull fine is rightfully levied in the same Kings Court, and that is whereof no fine of the husband, and his wife is levied in the Kings Court, for at the time of the making of the said Statute, every estate of lands or tenements that any man or woman had that should descend

to

to his heire, was fee simple without condition, or upon condition in deed, or in Law And because that such fine then might lawfully have been levied by the husband and his wife and that if the heires of the husband warrant, &c. such warranty shal bar the heire &c.

Also, so they say, that this is the understanding of the said statute; for if the husband and the wife made a feoffement in fee by deed in the country, the heire after the decease of the husband and the wife shal have a writ of Entre sur Cui in vita, &c. notwithstanding the warranty of the husband: Then if no such exception was made in the statute of the fine levied &c. then the heire should have the writ of Entre, &c. notwithstanding the fine levied by the husband and the wife because that the words of the statute, before the exception of the fine levied. &c. be general, &c. that is to say. that the heire of the woman after the death of the husband and the wife, shal not be barred of action if he demand the heritage or the marriege of his mother by a writ of Entre. that his father aliened in the time of his mother, and so it should be in that case of the statute, except such words were, that is to say, whereof no fine is levied in the Kings Court: and so they say that this is to be understood, whereof no fine by the husband and the wife, is levied in the Kings Court, the which is lawfully levied in such case: For if the Justice have knowledge that a man that hath nothing but in the right of his wife, will levy a fine in his name onely, they will not, nor ought not to take such fine to be levied by the husband onely, without naming the wife, therfore inquire of this matter.

Also

Also it is to wit, that in such words where the heire demandeth the heritage or marriage of his mother, this word (or) is a disjunctive, and is as much to say, if the heir demand the heritage of his mother, that is to be understood, the tenements that his mother had in fee simple by descent, or by purchase, or if the heire demand the marriage of his mother, that is to say the tenements that were given unto his mother in frankmarriage.

Also, where it is moved in divers deeds these words in Latin, Ego & hæred'mei, &c. warrantizabimus, & imperpetuum defendemus, it is to see what effect hath that word Defendemus in such deeds: and it seemeth that it hath not the effect of warrantize, nor comprehendeth any clause of warrantize, for if it should be so that it taketh effect or cause of warrantize, then it should be put in some fines levied in the Kings Court. And a man never saw that this word Defendemus was in a fine, but only this word Warrantizabimus, by which it seemeth, that this verbe Warrantize maketh warranty, and is the cause of warrantize, and no other word in our Law.

Also, if tenant in the taile be seized of tenements devisable by Testament after the custome, &c. and the tenant in the taile alieneth the tenements to his brother in fee, and hath issue and dyeth, and after his brother deviseth by his testament the same tenements to another in fee and bindeth him and his heirs to warrantize, &c. and dieth without issue, it seemeth that this warranty shall not bar the issue in the taile, if he will shew his writ of Formedon, because

cause that the warranty descended not to the issue in the taile, insomuch that the uncle of the issue was not bound by force of the same warranty in his life: And the cause that he could not warrant the land in his life is, insemuch that the devise could not take any execution or effect but after his decease, and insomuch that the uncle in his life was not held to warranty, such warrantize may not descend from him to the issue in the taile, &c. for nothing may descend from the ancestor to his heire, but the same that was in the Ancestor. Also a warranty may not go after the nature of tenements by custome but onely after the forme of the Common Law. For if tenant in taile be seised of tenements in Borough English, where the custome is, that all tenements of the same Borough ought to descend to the youngest son and he discontinueth the taile with warranty, &c. and hath issue two sons and dieth seized of other lands and tenements in the same borough in fee simple to the value and more of the tenements tailed, &c. yet the youngest sonne shall have a Formedon of the tenements tailed, and shall not be barred by the warrantize of his father, though enough to him descended in fee simple from the same father after the custome, for this, that the warrantize descendeth from the elder brother that is in full life, &c. and not upon the youngest son. In the same manner it is of collateral warrantize made of such tenements where the warrantize descendeth to the elder son, &c. this shall not bar the younger son, &c. In the same manner it is of tenements in the Shire of Kent, which is called Gavelkind, the which tenements

be departible among the brethren, &c. after the custome, &c. if any such warranty be made by their ancestors, such warranty discendeth all onely to the heire that is heire by the Common Law, and not to all the heires which are heires of such tenements after the custome, &c.

Also, if tenant in the taile have issue two daughters by divers venters, and dieth, and the daughters enter, and the stranger disseiseth them of the same tenements, and one of the daughters releaseth by her deed to the disseisor all her right, and bindeth her and her heires to warrantize, and dieth without issue, in this case the sister that surviveth may well enter, and put out the disseisor of all the tenements, for this, that such warrantize is no discontinuance, nor collaterall warraptize to the sister that surviveth, for this, that they be of halfe blood, and the one may not be heir to the other after the common Law. But otherwise it is where there be daughters of tenants in the taile by one venter.

Also, if tenant in the taile let tenements to another for terme of life, the remainder to another in fee, and the collaterall ancestor confirmeth the estate of the tenant for terme of life, and bindeth him and his heires to warrantize for term of life of the tenant for terme of life and dieth, and the tenant in the taile hath issue and dyeth, now this issue is barred to aske the tenements by writ of Formedon during the life of the tenant for terme of life, because of the collaterall descent upon the issue in the taile. But after the decesse of the tenant for terme of life, the issue shall have a Formedon, &c. And upon this I have heard a reason, that this case shal prove another case:

case: that is to say, If a man let his land to another, to have and to hold unto him and to his heires for terme of anothers life, and the Lessor dieth, living him to whose life &c and a stranger entreth into the land, that the heire of the Lessee may put him out, for this, that is the case next aforesaid, insomuch that a man may bind him and his heires to warrant to the tenant for terme of life, all onely during the life of the Tenant for terme of life, and the warrantize descendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheritance, but all only for terme of anothers life. By the same reason where tenements be let to a man to have and to hold to him and to his heires for terme of anothers life, if the father die, living him to whose life &c. his heire shall have the tenements living him to whose life, &c. For they have said, that if a man grant an annuity to another, to have and to take to him and to his heirs for term of anothers life, if the grantee die, &c. that after his heire shal have the annuity during the life of him to whose, &c. Quære de ista materia, &c.

But where such a lease or grant is made to a man and his heires for terme of yeares, in this case the heire of the lessee and the grantor shall never have after the death of the lessee or the grantee that is so letten or granted, for this that it is a chattel real, and all chattels reals by the common Law, shal come to the executors of the grantee or the lessee, and not to the heir, &c.

Also, in some cases it may bee, that howbeit that a collateral warrantize be made in fee &c. yet such warrantize may be defeated and anien-

ted.

ted. As the tenant in the taile discontinueth the taile in fee, and the discontinuee is disseised, and the brother of the tenant in the taile releaseth by his deed to the disseisor all his right, &c. with warrantize in fee, and dieth without issue, and the tenant in the tail hath issue and dyeth now the issue is barred of his action by force of the collaterall warranty descending upon him: but if after this the discontinuee enter upon the disseisor, then may the heire in the taile have his Action of Formedon, &c for this, that the warranty is aniented and defeated. For when the warrantize is made unto a man upon any estate that then he had, if the estate be defeated, the warranty is defeated.

In the same manner it is if the discontinuee make a feoffement in fee reserving to him certain rent, and for default of payment a reentry, &c. and a collaterall Ancestor releaseth to the feoffee that hath estate upon condition, &c. and dieth without issue, though that the warranty descended upon the issue in the taile, yet if after the rent be behind, and the discontinuee entreth into the land, &c. then the issue in the taile shall have his recovery by a writ of Formedon, for this, that the warranty collaterall is defeated. And so if any such collateral warranty be pleaded against the issue in the taile in his action of Formedon he may shew the matter as is aforesaid, how the warranty is defeated, and so he may well maintain his action.

Also, if a tenant in the taile make a feoffment to his uncle, and after his uncle maketh a feoffment in fee with warrantize, &c. to another, and after the feoffee of the uncle enfeoffeth again the uncle

uncle in fee, and after the uncle enfeoffed a ſtranger in fee without warrantize, and dieth without iſſue, and the tenant in the taile will bring his Writ of Formedon againſt the ſtranger that was the laſt feoffee, and that by the uncle, in this caſe the iſſue ſhall never be barred by the warranty that was made by the uncle to the ſaid laſt feoffee of his uncle, for this, that the ſaid warrantize was deleated and enicnted, for this, that the uncle took again to him as great eſtate of this ſaid firſt iſſue to whom the warrantize was made, as the ſame feoffee had of him: And the cauſe why the warranty is aniented in this caſe is this, that is to ſay, that if the warrantize were in his force, then the uncle ſhall warrant fee ſimple unto himſelfe, that may not be, but if the feoffee made eſtate to the uncle for terme of life, or in fee taile, ſaving the reverſion unto him, &c. Or that he made a gift in the taile to the uncle, or a leaſe for terme of life, the remainder over, &c. In this the warrantize is not all utterly aniented, but it is put in ſuſpence during the eſtate that the uncle had, for after this, that the uncle is dead without iſſue, then he in the reverſion, or he in the remainder ſhall bar the iſſue in the taile of his Writ of Formedon by the collateral warrantize in ſuch caſe, &c. But otherwiſe it is where the uncle had as great eſtate in the land by the feoffee to whom the warrantize was made, as the feoffee had of him, &c.

Alſo, if the uncle after ſuch feoffment made with warrantize, or a releaſe made by him with warrantize be attaint of felony, or outlawed of felony, ſuch collateral warranty ſhall not bar nor barre the iſſue of the taile, for this, that by the

attainder of felony, the blood is corrupt between them, &c.

Also, if tenant in the taile be disseised, and after maketh a release to the disseisor with warrantize in Fee, and after the tenant in the taile is attaint or outlawed of felony, and hath issue and dieth, in this case the issue in the taile may enter upon the disseisor: And the cause is for this that nothing maketh discontinuance in this case but the warranty, and the warranty may not descend to the issue in the taile, for this, that the blood is corrupt between him that made the warrantize and the issue in the taile, for the warrantize alway abideth at the Common Law, and the Common Law is such, that when a man is outlawed, or attaint of felony, which outlawry is an attainder in the Law that the blood between him and his Son, and all other which should be said his heirs is corrupt, so that nothing by descent may descend to any that may be his heir by the Common Law: And the wife of such a man that is so attaint shall never be endowed in the tenements of her husband so attaint, &c. And the cause is, because men should more eschew to do felony, &c. But the issue in the taile, as to the tenements tailed is not in such case barred, because he is inheritable by force of the Statute, and not by the course of the Common Law. And therefore such attainder of his father or his Ancestor in the taile, &c. shall not put him out of his right, that he should have by force of the taile.

Also, if tenant in the taile enfeoffe his uncle which enfeoffeth another with warranty, &c. after the feoffee by his Deed release to the uncle

all manner of warranties, or all manner of covenants reals, or all manner of demands, by such release the warranty is extinct. And if the warranty in such case be pleaded against the heire in the taile that bringeth his writ of Formedon, to bar the Heire of his action, if the Heir have and plead the said release, &c. he shall defeat the plea in bar, &c. and many other causes and matters there be whereby he may defeat warranties.

And it is, to wit, that in the same manner as collateral warranty may be defeated by matter in deed, or in law, in the same manner may lineall warranty be defeated, &c. For if the Heir in the taile bring a writ of Formedon, and a lineall warranty of his Ancestor inheritable by force of the taile be pleaded against him with that the assets to him descended of fee simple by the same Ancestor that made the warranty, if the Heire that is demandant may adnull and defeat the warranty, this sufficeth to him: for the descent of other tenements of fee simple maketh nothing to bar the heire without the warranty, &c.

FINIS.

Here beginneth the Table of this preſent Book.

NOw I have made for thee, my Son, three Bookes. The firſt is of Eſtates that men have of Lands or Tenements, that is to ſay,

Of Tenant in Fee Simple.
Tenant in Fee Taile.
Tenant in the Taile after poſſibility of iſſue extinct.
Tenant by the Curteſie of England.
Tenant in Dower.
Tenant for terme of life
Tenant for terme of yeares.
Tenant at will by the Common Law.
Tenant at will by the cuſtome of the Manner.

The ſecond Book.

The ſecond Booke is of Homage.
Fealty.
Eſcuage.
Knights ſervice.
Socage.
Frankalmoigne: or Free Almes.
Homage Auncſtrel.

Grand

Grand Serjeanty.
Petty Serjeanty.
Tenure in Burgage.
Tenure in Villeinage.
Of three manner of Rents, that is to say,
Rent service,
Rent Charge, and
Rent Seek.

And these two small Books have I made for thee, for to understand better certain Chapters of the ancient Books of Tenures.

The third Book.

The Third Book is of Parceners.
Of Joyntenants
Tenants in common.
Estates of Lands or Tenements upon Condition.
Descents that take away Entries.
Continual claime.
Releases.
Confirmations.
Attournments.
Remitters.
Of Warranties, that is to say,
Warranty lineal, and
Warranty that beginneth by disseisin.

And know then my Son, that I will not that thou believe, that all that I have said in the said Books is Law, for that will I not take upon me, nor presume; but of those things that be not Law, enquire and learn of my wise Masters learned in the Law.

Not-

Notwithstanding, though that certaine things that be noted and specified in the said Books be not Law, yet such things shall make thee more apt and able to understand, and learn the Arguments and the Reasons of the Law: For by the Arguments and the Reasons in the Law, a man may more sooner come to the certainty, and to the knowledge of the Law.

Lex plus laudatur, quando ratione probatur.

Lex plus laudatur, quando ratione probatur

FINIS.

Thomas Thynne
his Bookes
1667

is be by two, or at the most by three, and that by
course, and let one interpret,
28 But if there be no interpreter, let him keep
silence in the church, and let him speak to himself,
and to God.
29 Let the prophets speak two or three, and let
the other judge.
30 If any thing be revealed to another that sitteth
by, let the first hold his peace.
31 For ye may all prophesie one by one, that all
may learn, and all may be comforted.
32 And the spirits of the prophets are subject to
the prophets.
33 For God is not the author of confusion, but
of peace, as in all churches of the saints.
34 Let your women keep silence in the churches,
for it is not permitted unto them to speak: but
they are commanded to be under obedience: as also
saith the law.
35 And if they will learn any thing, let them
ask their husbands at home: for it is a shame for
women to speak in the church.
36 What? came the word of God out from you?
or came it unto you onely?
37 If any man think himself to be a prophet,
or spiritual, let him acknowledge, that the things
that I write unto you, are the commandements of
the Lord.
38 But if any man be ignorant, let him be igno-
rant.
39 Wherefore brethren, covet to prophesie, and
forbid not to speak with tongues.
40 Let all things be done decently, and in order.

CHAP. XV.

1 Moreover, brethren, I declare unto you the
gospel, which I preached unto you, which also
you have received, and wherein ye stand.
2 By which also ye are saved, if ye keep in
memory what I preached unto you, which ye have
believed in vain.
3 Then I delivered unto you first of all, that
which I also received, how that Christ died for our
sins according to the scriptures.
4 And that he was buried, and that he rose
again the third day according to the scriptures.

5 And that he was seen of Cephas, then of the
twelve.
6 After that he was seen of above five hundred
brethren at once, of whom the greater part remain
unto this present, but some are fallen asleep.
7 After that he was seen of James, then of all
the apostles.
8 And last of all, he was seen of me also, as of
one born out of due time.
9 For I am the least of the apostles, that am
not meet to be called an apostle, because I perse-
cuted the church of God.
10 But by the grace of God I am what I am:
and his grace which was bestowed upon me was not

13 Wherefore let him that speaketh in an *vnknown* tongue, pray that he may interpret.

14 For if I pray in an *vnknown* tongue, my spirit prayeth but my vnderstanding is vnfruitfull.

15 What is it then? I will pray with the spirit, and will pray with vnderstanding also: I will sing with the spirit, and I will sing with the vnderstanding also.

16 Else, when thou shalt bleese with the spirit, how shall he that occupieth the room of the vnlearned, say Amen at thy giving of thanks, seeing he vnderstandeth not what thou sayest?

17 For thou verily giuest thanks well: but the other is not edified.

18 I thank my God, I speak with tongues more then you all.

19 Yet in the church I had rather speak fiue words with my vnderstanding, that by my voice I might teach others also, then ten thousand words in an *vnknown* tongue.

20 Brethren be not children in vnderstanding: howbeit, in malice be ye children, but in vnderstanding be men.

21 In the law it is written, With men of other tongues, and other lips will I speak vnto this people: and yet for all that will they not hear me, saith the Lord.

22 Wherefore tongues are for a signe, not to them that beleeve, but to them that beleeue not: but prophesying *serueth* not for them that beleeue not, but for them which beleeue.

23 If therefore the whole church be come together into one place, and all speak with tongues, and there come in those that are vnlearned, or vnbeleeuers, will they not say that ye are mad?

24 But if all prophesie, and there come in one that beleeueth not, or one vnlearned, he is conuinced of all, he is iudged of all.

25 And thus the secrets of his heart are made manifest, and so falling down on his face, he will worship God, and report that God is in you of a truth.

26 How is it then, brethren? when ye come together, euery one of you hath a psalme, hath a doctrine, hath a tongue, hath a reuelation, hath an interpretation? let all things be done vnto edifying.